No. 01-1418 (5)

IN THE

Supreme Court of the United States

A. ELLIOTT ARCHER AND CAROL A. ARCHER,
Petitioners,

v.

ARLENE L. WARNER,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MARCH 22, 2002
CERTIORARI GRANTED JUNE 24, 2002

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GENERAL DOCKET
U.S. Court of Appeals for the Fourth Circuit

Court of Appeals Docket #: 00-2525 Filed: 12/6/00
Nsuit: 3422 Bankruptcy Appeal (801)

Archer, et al v. Warner, et al

Appeal from:
Middle District of North Carolina
at Greensboro

* * * *

00-2525 Archer, et al v. Warner, et al

12/6/00	Bankruptcy case docketed. (sn)
12/8/00	Docketing notice issued. [00-2525] (sn)
12/11/00	Docketing statement filed by Appellant [3300230-1] T/S needed [Y/N]: n T/S already on file?: n/a. [00-2525] (amy)
12/12/00	Briefing order filed. [00-2525] Appellant(s) brief/joint appendix due 1/22/01 for Carol A. Archer, for A. Elliott Archer. (amy)
12/14/00	Addendum to docketing statement filed by Appellant A. Elliott Archer, Appellant Carol A. Archer. [00-2525] (sn)
12/18/00	Counsel of record form filed by Harry Glen Gordon for A. Elliott Archer, Carol A. Archer. (amy)
12/18/00	Negative disclosure statement filed by Appellant A. Elliott Archer, Appellant Carol A. Archer [00-2525] (amy)

12/20/00	Counsel of record form filed by Rayford Kennedy Adams for Appellee Arlene L. Warner. (sn)
12/20/00	Negative disclosure statement filed by Debtor Arlene L. Warner [00-2525] (sn)
12/21/00	Certification of ROA complete and retained in the District Court. [00-2525] (dad)
12/21/00	Docketing statement filed by Appellee Leonard L. Warner, Appellee Arlene L. Warner. [3305853-1]; T/S already on file: [00-2525] (sn)
1/22/01	Brief joint appendix filed by Appellant A. Elliott Archer, Appellant Carol A. Archer. Copies of brief: 8 # brf pages: 65 Sufficient[Y/N]?: Y. Copies of apx: 6 # apx pages: 156. Method of filing w/ court: HD Date of Service on parties: 1/22/01 Type of service on parties: CD Appellee brief due 2/26/01 for Arlene L. Warner. [00-2525] (aww)
2/23/01	Case tentatively calendared for oral argument Term: 5/01 Place: Richmond. SUBMISSION DEADLINE: 3/5/01. (jc)
2/26/01	Brief filed by Appellee Arlene L. Warner. Copies of brief: 8 # brf pages: 50. Sufficient[Y/N]?: y. Method of filing w/ court: HD] Date of Service on parties: 2/26/01 Type of service on parties: PM [00-2525] (wtc)
3/5/01	Motion filed by Appellant A. Elliott Archer, Appellant Carol A. Archer to submit case on briefs without oral argument [3345345-1]. [00-2525] (amy)
3/7/01	COURT ORDER filed denying motion to submit case on briefs [3345345-1] Copies to all counsel. [00-2525] (sn)

3/9/01	Reply brief filed by Appellant A. Elliott Archer, Appellant Carol A. Archer. Copies of brief: 8 # brf pages: 17. Sufficient[Y/N]?: y. Method of filing w/ court: HD Date of Service on parties: 3/9/01 Type of service on parties: PM [00-2525] (wtc)
3/30/01	Case tentatively calendared for oral argument Term: 6/01 Place: Richmond. SUBMISSION DEADLINE: 4/9/01. (jc)
3/30/01	Case tentatively calendared for oral argument Term: 6/01 Place: Richmond. SUBMISSION DEADLINE: 4/9/01. (jc)
4/9/01	Motion filed by Appellant A. Elliott Archer, Appellant Carol A. Archer to continue oral argument. [3366425-1]. [00-2525] (amy)
4/10/01	ORDER FILED granting motion to continue oral argument [3366425-1] Argument continued until the week of 9/24/01 through 9/28/01. Copies to all counsel. [00-2525] (dad)
7/13/01	Case tentatively calendared for oral argument Term: 9/01 Place: Richmond. SUBMISSION DEADLINE: 7/23/01. (jc)
7/30/01	Case calendared for oral argument. Scheduled Argument Date: 9/27/01. [00-2525] (jc)
8/23/01	Motion filed by Appellant A. Elliott Archer, Appellant Carol A. Archer to submit case on briefs without oral argument [3443112-1]. [00-2525] (mr)
8/24/01	Response/answer requested to motion to submit case on briefs [3443112-1]. Response/answer due 9/4/01 for Arlene L. Warner. [00-2525] (mr)
8/30/01	Response/answer filed [3447315-1] by Appellee Arlene L. Warner to motion to submit case on briefs [3443112-1] [00-2525] (sn)

9/6/01	COURT ORDER filed denying motion to submit case on briefs [3443112-1] Copies to all counsel. [00-2525] (sn)
9/27/01	Oral argument heard. Courtroom Deputy: aweb. [00-2525] (aweb)
3/8/02	Published, authored opinion filed. [00-2525] (sn)
3/8/02	Judgment order filed. Decision: affirmed. EOD Date: 3/8/02. [00-2525] (sn)
3/21/02	Bill of costs filed by appellee. [3557628-1] [00-2525] (sn)
4/1/02	ORDER filed awarding costs in the amount of $196.00. Copies to counsel. [00-2525] (amy)
4/1/02	Mandate issued. [00-2525] (amy)
4/2/02	Supreme Court notice that petition for certiorari was filed on 03/22/02. Spct No.: 01-1418 Spct Pty 1: A. Elliott Archer Spct Pty 2: Arlene L. Warner. [00-2525] (dhb)
4/8/02	Record on appeal returned to USDC at Greensboro. Pleadings: Vol. 1 T/S: Vol. 2 Exhibits: Vol. 3-5 [00-2525] (jsn)
5/1/02	Federal Reporter Citation: 283 F.3d 230. [00-2525] (vsl)

APPEAL CLOSED

U.S. District Court
Middle District of North Carolina (Durham)

CIVIL DOCKET FOR CASE #: 99-CV-924

* * * *

A. ELLIOTT ARCHER; CAROL A. ARCHER,
appellant

v.

ARLENE L. WARNER,
appellee

* * * *

10/19/99	1	BANKRUPTCY RECORD on appeal received and consists of the following documents: 1, 25, 49, 54, 58, 67, 69, 71, 89, *, **, 91, 92, 93, 94, 95 and 96. This is an appeal of the judgment dismissing, with prejudice, Arlene L. Warner, entered on 8/30/99, by Judge William L. Stocks. (km) [Entry date 10/22/99] [Edit date 10/25/99]
10/22/99	2	NOTICE of docketing bankruptcy record on appeal. Appellant's brief due 11/6/99 for CAROL A. ARCHER, for A. ELLIOTT ARCHER. (km)
11/3/99	3	Appellant's BRIEF by A. ELLIOTT ARCHER, CAROL A. ARCHER. Appellee's brief due 11 /18/99 for ARLENE L. WARNER (jw) [Entry date 11/04/99]
11/12/99	4	MOTION by ARLENE L. WARNER to Strike [3-1] appellant's brief by CAROL A.

ARCHER, A. ELLIOTT ARCHER (jw) [Entry date 11/15/99]

11/12/99 5 BRIEF by ARLENE L. WARNER in support of [4-1] motion to Strike [3-1] appellant's brief by CAROL A. ARCHER, A. ELLIOTT ARCHER (jw) [Entry date 11/15/99]

11/18/99 6 ADDENDUM to BANKRUPTCY APPEAL received RE: To include Issues on Appeal (See doc # 98) (lks) [Entry date 11/19/99] [Edit date 12/02/99]

11/18/99 7 Appellee's BRIEF by ARLENE L. WARNER. Appellant's reply brief due 11/28/99 for CAROL A. ARCHER, for A. ELLIOTT ARCHER (jw) [Entry date 12/02/99]

11/30/99 8 MOTION by ARLENE L. WARNER to Strike [7-1] appellant's amended designation of record on appeal and issues on appeal (jw) [Entry date 12/01/99]

11/30/99 9 BRIEF by ARLENE L. WARNER in support of [8-1] motion to Strike [7-1] appellant's amended designation of record on appeal and issues on appeal (jw) [Entry date 12/02/99]

11/30/99 10 MOTION by A. ELLIOTT ARCHER, CAROL A. ARCHER to Strike [7-1] appellee's brief by ARLENE L. WARNER (jw) [Entry date 12/02/99]

11/30/99 11 BRIEF IN OPPOSITION/RESPONSE by A. ELLIOTT ARCHER, CAROL A. ARCHER to [4-1] motion to Strike [3-1] appellant's brief by CAROL A. A. ELLIOTT ARCHER by ARLENE L. WARNER (jw) [Entry date 12/02/99]

11/30/99 11 BRIEF by A. ELLIOTT ARCHER, CAROL A. ARCHER in support of [10-1] motion to Strike [7-1] appellee's brief by ARLENE L. WARNER by CAROL A. ARCHER, A. ELLIOTT ARCHER (jw) [Entry date 12/02/99]

12/1/99 12 Appellant's REPLY BRIEF by A. ELLIOTT ARCHER, CAROL A. ARCHER. (jw) [Entry date 12/02/99]

3/6/00 13 ORDER denying [8-1] motion to Strike [7-1] appellant's amended designation of record on appeal and issues on appeal, denying [10-1] motion to Strike [7-1] appellee's brief by ARLENE L. WARNER, denying [4-1] motion to Strike [3-1] appellant's brief by CAROL A. ARCHER, A. ELLIOTT ARCHER signed by JUDGE FRANK W. BULLOCK JR. [EOD Date 3/6/00] (jw)

7/6/00 -- Argument on Bankruptcy Appeal set at 9:30 8/7/00 before JUDGE FRANK W. BULLOCK JR. in GSO 3. (dm) [Edit date 08/23/00]

7/6/00 14 NOTICE of Hearing: Argument on bankruptcy appeal - 8/7/2000 at 9:30 a.m. (before JUDGE FRANK W. BULLOCK JR.) (dm) [Edit date 07/06/00]

8/7/00 -- Argument on Bankruptcy Appeal NOT held before JUDGE FRANK W. BULLOCK JR. in GSO; Snyder court reporter. Appellant attorney not present. Hearing will be rescheduled. (dm) [Edit date 08/23/00]

8/8/00 15 NOTICE of Hearing: reset Argument on Bankruptcy Appeal for 3:00 8/29/2000 in COURTROOM #3 (GSO) (before JUDGE FRANK W. BULLOCK JR.) (dm)

8/30/00 -- Argument on Bankruptcy Appeal held before JUDGE FRANK W. BULLOCK JR. in GSO; Snyder court reporter. Court to enter findings

within next 30 days. (dm) [Entry date 09/25/00]

9/27/00 16 MEMORANDUM OPINION (signed by JUDGE FRANK W. BULLOCK JR.) re: Appellants, A. Elliott Archer and Carol A. Archer appeal an Order of the bankruptcy court entering judgment in favor of Appellee, Arlene L. Warner, on the Archers' non-dischargeability action under Section 523(a)(2) of the Bankruptcy Code. The decision of the bankruptcy court will be affirmed. An order and judgment in accordance with this memorandum opinion shall be entered contemporaneously herewith [EOD Date 9/27/00] (jw)

9/27/00 17 ORDER AND JUDGMENT signed by JUDGE FRANK W. BULLOCK JR. for the reasons set forth in the memorandum opinion filed contemporaneously herewith. Judgment of the Bankruptcy Court is AFFIRMED, and this appeal is DISMISSED. [EOD Date 9/27/00] (jw)

9/27/00 -- CASE CLOSED. Closing Code 13 (jw) [Entry date 09/28/00]

10/27/00 18 MOTION by A. ELLIOTT ARCHER, CAROL A. ARCHER to Continue time to file notice of appeal by 30 days to 11/27/2000. (dm)

10/27/00 -- Motion submission: [18-1] motion to Continue time to notice of appeal by 30 days to 11/27/2000. submitted Judge Bullock (dm)

10/27/00 19 ORDER signed by JUDGE FRANK W. BULLOCK JR. that the time for plaintiff-appellants to file a Notice of Appeal in the September 27, 2000 Order Judgment entered in this matter be extended from October 27,

2000 until Monday, November 27, 2000. Ccs to counsel [EOD Date 10/27/00] (lks)

11/27/00 20 NOTICE OF APPEAL to USCA 4th Circuit by CAROL A. ARCHER and A. ELLIOTT ARCHER Fling Fee $ 105.00 Receipt # 00065930 appealing Order and Judgment dated September 27th, 2000. (cb) [Entry date 11/28/00]

11/27/00 -- Copy of Notice of Appeal and certified copy of docket to USCA: [20-1] appeal by CAROL A. ARCHER and A. ELLIOTT ARCHER (cb) [Entry date 11/29/00] [Edit date 11/29/00]

12/12/00 21 USCA's Notice of Docketing Appeal Re: [20-1] appeal USCA Number: 00-2525; Case Manager, Sue Ellen Nagle (cb) [Entry date 12/13/00]

12/18/00 22 Clerk's Certificate transmitted to USCA that Appeal Record is Complete [20-1] appeal by CAROL A. ARCHER (cb)

U.S. Bankruptcy Court
Middle District of North Carolina (Greensboro)

* * * *

1/29/97	1	Complaint (97-2003) A. Elliott Archer vs. Leonard L. Warner NOS 426 Dischargeability 523 (Filing fee PAID). (yhp) [EOD 01/30/97] [97-2003]
1/30/97	2	1 Summons(es) issued on Arlene L. Warner, Leonard L. Warner Answer due 3/1/97 for Arlene L. Warner, for Leonard L. Warner Pre-Trial Hearing set for 9:30 4/1/97 at Courtroom #1, Greensboro; and Scheduling Memorandum due 3/28/97. (yhp) [EOD 01/30/97] [97-2003]
1/30/97	--	Pre-Trial Hearing set for 9:30 4/1/97 at Courtroom #1, Greensboro (yhp) [EOD 01/30/97] [97-2003]
2/11/97	3	Summons Served 2/7/97 on Arlene L. Warner, Leonard L. Warner. (yhp) [EOD 02/11/97] [97-2003]
3/28/97	4	Scheduling Memorandum filed by Plaintiff Carol A. Archer, Plaintiff A. Elliott Archer. (yhp) [EOD 03/31/97] [97-2003]
4/1/97	--	Pre-Trial Hearing held (scj) [EOD 04/01/97] [97-2003]
4/4/97	5	Scheduling Order. Final Pre-Trial disclosures shall be filed on or by September 28, 1997, unless a dispositive motion is filed, in which case, the final pre-trial disclosures shall be filed within 20 days of the entry of the order ruling on the dispositive motion. (PRE MINUTE SHEET of Pre-Trial held 4/1/97, states that it is 'further ordered that the time to file

		answer is extended 30 days'. (lhg) [EOD 04/07/97] [97-2003]
4/18/97	6	Motion by the Plaintiffs, Carol A. Archer and A. Elliott Archer for Clerks Entry of Default. (yhp) [EOD 04/18/97] [97-2003]
4/18/97	7	Affidavit of Harry G. Gordon, Attorney for the Plaintiffs, Carol A. Archer and Plaintiff A. Elliott Archer. (yhp) [EOD 04/18/97] [97-2003]
4/22/97	8	Order, to Extend Time to file an Answer; Answer due: 4/30/97 for Arlene L. Warner, for Leonard L. Warner (yhp) [EOD 04/22/97] [97-2003]
5/1/97	9	Amended Motion by Plaintiff Carol A. Archer, Plaintiff A. Elliott Archer for Clerks Entry of Default (yhp) [EOD 05/01/97] [97-2003]
5/1/97	10	Amended [7-1] Affidavit. Filed by: Plaintiff Carol A. Archer, Plaintiff A. Elliott Archer (yhp) [EOD 05/01/97] [97-2003]
5/2/97	11	Motion by Plaintiff Carol A. Archer, Plaintiff A. Elliott Archer for Clerks Entry of Default against the Female Defendant (ONLY). (yhp) [EOD 05/05/97] [Edit date 05/05/97] [97-2003]
5/2/97	12	Affidavit of Harry G. Gordon for Plaintiff Carol A. Archer, Plaintiff A. Elliott Archer. (yhp) [EOD 05/05/97] [97-2003]
5/5/97	13	Answer to Complaint by Defendant, Leonard L. Warner. (yhp) [EOD 05/05/97] [97-2003]
5/8/97	14	Entry of Default as to Arlene L. Warner (yhp) [EOD 05/08/97] [97-2003]
5/9/97	--	Status Hearing set for 9:30 5/27/97 at Courtroom #1, Greensboro (yhp) [EOD 05/09/97] [Edit date 05/15/97] [97-2003]

5/9/97	15	Notice of Hearing re: [0-0] Status Hearing # Notices n/a on 5/11/97 (yhp) [EOD 05/13/97] [97-2003]
5/27/97	--	Status Hearing held (scj) [EOD 05/27/97] [97-2003]
6/18/97	16	Consent Order Granting [1-1] Complaint NOS 426 Dischargeability 523 (debt owed by Defendant, Leonard L. Warner is EXCEPTED from Discharge) (yhp) [EOD 06/20/97] [97-2003]
8/1/97	--	Status Hearing set for 9:30 8/19/97 at Courtroom #1, Greensboro (lhg) [EOD 08/01/97] [97-2003]
8/1/97	--	Hearing re: [0-0] Status Hearing set for 9:30 8/19/97 at Courtroom #1, Greensboro (lhg) [EOD 08/01/97] [97-2003]
8/1/97	17	Notice of Hearing re: [0-0] Status Hearing. # Notices 7 on 8/3/97. (lhg) [EOD 08/05/97] [97-2003]
8/14/97	18	Motion by the Plaintiffs, A. Elliott Archer and Carol A. Archer for Summary Judgment. (yhp) [EOD 08/14/97] [97-2003]
8/19/97	--	Hearing re: [0-0] Hearing Status Hearing set for 9:30 9/3/97 at Courtroom #1, Greensboro (scj) [EOD 08/19/97] [97-2003]
8/28/97	19	Affidavit of Harry G. Gordon, Attorney for Plaintiffs, Carol A. Archer, and A. Elliott Archer, in Support of Motion for Summary Judgment as to Arlene L. Warner. (lhg) [EOD 08/28/97] [97-2003]
8/29/97	20	Motion by Defendant Arlene L. Warner to Vacate and set aside [14-1] Judgment of Entry of Default by Arlene L. Warner. (lhg) [EOD 08/29/97] [97-2003]

8/29/97	--	Hearing re: [20-1] Motion to Vacate and set aside [14-1] Judgment of Entry of Default by Arlene L. Warner by Arlene L. Warner set for 9:30 9/16/97 at Courtroom #1, Greensboro (lhg) [EOD 08/29/97] [97-2003]
8/29/97	21	Notice of Hearing re: [20-1] Motion to Vacate and set aside [14-1] Judgment of Entry of Default by Arlene L. Warner by Arlene L. Warner # Notices n/a (lhg) [EOD 09/03/97] [97-2003]
9/3/97	--	Hearing held re: [0-0] Hearing. (scj) [EOD 09/03/97] [97-2003]
9/16/97	22	Affidavit of Attorney Maxine D. Kennedy. (yhp) [EOD 09/16/97] [97-2003]
9/16/97	--	Hearing held re [20-1] Motion to Vacate and set aside [14-1] Judgment of Entry of Default by Arlene L. Warner by Arlene L. Warner. (scj) [EOD 09/17/97] [97-2003]
9/16/97	23	Order Granting [20-1] Motion to Vacate and set aside [14-1] Judgment of Entry of Default by Arlene L. Warner by Arlene L. Warner. Arlene L. Warner shall have twenty (20) days from the date of this order within which to file an answer or other response to the complaint. (lhg) [EOD 09/17/97] [97-2003]
9/18/97	24	Summons Served 9/18/97 on Arlene L. Warner. (yhp) [EOD 09/18/97] [97-2003]
10/6/97	25	Answer to Complaint by Defendant Arlene L. Warner. (yhp) [EOD 10/06/97] [97-2003]
12/30/97	--	Status Hearing set for 9:30 1/27/98 at Courtroom #1, Greensboro (yhp) [EOD 12/30/97] [97-2003]
12/30/97	26	Notice of Hearing re: [0-0] Status Hearing # Notices 5 on 1/1/98 (yhp) [EOD 01/05/98] [Edit date 01/06/98] [97-2003]

1/20/98	27	Withdrawal by the Plaintiffs, Carol A. Archer and A. Elliott Archer of [18-1] Motion for Summary Judgment by Carol A. Archer, A. Elliott Archer (yhp) [EOD 01/20/98] [97-2003]
1/27/98	--	Status Hearing held g. (scj) [EOD 01/27/98] [97-2003]
2/6/98	28	Order, to continue Hearing on:([0-0] Hearing Status Hearing reset to 9:30 5/12/98 at Courtroom #1, Greensboro) (lhg) [EOD 02/06/98] [97-2003]
3/19/98	29	Motion by the Defendant, Arlene L. Warner to Extend Time to Answer Plaintiff's Carol A. Archer's First Set of Interrogatories and First Request for Production of Documents for an extension of 30 days. (lhg) [EOD 03/20/98] [97-2003]
3/19/98	30	Motion by the Defendant, Arlene L. Warner to Extend Time to Answer Plaintiff's A. Elliott Archer and Plaintiff's Carol A. Archer's First Request for Admissions for an additional thirty days. (lhg) [EOD 03/20/98] [97-2003]
3/19/98	31	Motion by the Defendant, Arlene L. Warner to Extend Time to Answer Plaintiff A. Elliott Archer's First Separate Request for Admissions for an additional thirty days. (lhg) [EOD 03/20/98] [97-2003]
3/19/98	32	Motion by the Defendant, Arlene L. Warner to Extend Time to Answer Plaintiff Carol A. Archer's First Separate Request for Admissions for an additional thirty days. (lhg) [EOD 03/20/98] [97-2003]
3/20/98	33	Order Granting [32-1] Motion to Extend Time to Answer Plaintiff Carol A. Archer's First Separate Request for Admissions for an additional thirty days by Arlene L. Warner (lhg) [EOD 03/20/98] [97-2003]

3/20/98	34	Order Granting [30-1] Motion to Extend Time to Answer Plaintiff's A. Elliott Archer and Plaintiff's Carol A. Archer's First Request for Admissions for an additional thirty days by Arlene L. Warner (lhg) [EOD 03/20/98] [97-2003]
3/20/98	35	Order Granting [29-1] Motion to Extend Time to Answer Plaintiff's Carol A. Archer's First Set of Interrogatories and First Request for Production of Documents for an extension of 30 days by Arlene L. Warner (lhg) [EOD 03/20/98] [97-2003]
3/20/98	36	Order Granting [31-1] Motion to Extend Time to Answer Plaintiff A. Elliott Archer's First Separate Request for Admissions for an additional thirty days by Arlene L. Warner (lhg) [EOD 03/20/98] [97-2003]
4/22/98	37	Response by Defendant Arlene L. Warner to Plaintiff/Carol A. Archer's First Separate Request for Admissions. (yhp) [EOD 04/23/98] [97-2003]
4/22/98	38	Response by Defendant/Arlene L. Warner to Plaintiff/A. Elliott Archer's First Separate Request for Admissions. (yhp) [EOD 04/23/98] [97-2003]
4/22/98	39	Response by Defendant/Arlene L. Warner to Plaintiff/A. Elliott Archer and Plaintiff/Carol A. Archer's First Request for Admissions. (yhp) [EOD 04/23/98] [97-2003]
5/12/98	40	Motion by the Defendant, Arlene L. Warner for Summary Judgment. (yhp) [EOD 05/12/98] [97-2003]

5/12/98 -- Status Hearing held. (scj) [EOD 05/12/98] [97-2003]

5/14/98 41 Order, to continue Hearing on:([40-1] Motion for Summary Judgment by Arlene L. Warner Hearing reset to 9:30 6/23/98 at Courtroom 1, Greensboro) (lhg) [EOD 05/15/98] [97-2003]

5/19/98 42 Motion by the Plaintiffs, Carol A. Archer and A. Elliott Archer to Compel Discovery, or in the alternative, to Deem all Requests for Admissions to be Admitted, or in the alternative, to Strike all Defenses of Defendant, Arlene L. Warner and render Judgment for Plaintiffs, and to Award Expenses, Including Attorneys' fees (yhp) [EOD 05/19/98] [Edit date 05/19/98] [97-2003]

5/20/98 -- Hearing re: [42-1] Motion to Compel Discovery by A. Elliott Archer, Carol A. Archer set for 9:30 6/23/98 at Courtroom #1, Greensboro, [42-2] Motion to Deem all Requests for Admissions to be Admitted by A. Elliott Archer, Carol A. Archer set for 9:30 6/23/98 at Courtroom #1, Greensboro, [42-3] Motion to Strike all Defenses of Defendant, Arlene L. Warner and render Judgment for Plaintiffs by A. Elliott Archer, Carol A. Archer set for 9:30 6/23/98 at Courtroom #1, Greensboro, [42-4] Motion to Award Expenses, Including Attorneys' fees by A. Elliott Archer, Carol A. Archer set for 9:30 6/23/98 at Courtroom #1, Greensboro (yhp) [EOD 05/20/98] [97-2003]

5/20/98 43 Notice of Hearing re: [42-1] Motion to Compel Discovery by A. Elliott Archer, Carol A. Archer, [42-2] Motion to Deem all Requests for Admissions to be Admitted by A. Elliott Archer, Carol A. Archer, [42-3] Motion to Strike all Defenses of Defendant, Arlene L.

Warner and render Judgment for Plaintiffs by A. Elliott Archer, Carol A. Archer, [42-4] Motion to Award Expenses, Including Attorneys' fees by A. Elliott Archer, Carol A. Archer # Notices 4 on 5/22/98 (yhp) [EOD 05/27/98] [97-2003]

6/18/98 44 Response by Defendant Arlene L. Warner to [42-1] Motion to Compel Discovery by A. Elliott Archer, Carol A. Archer, [42-2] Motion to Deem all Requests for Admissions to be Admitted by A. Elliott Archer, Carol A. Archer, [42-3] Motion to Strike all Defenses of Defendant, Arlene L. Warner and render Judgment for Plaintiffs by A. Elliott Archer, Carol A. Archer, [42-4] Motion to Award Expenses, Including Attorneys' fees by A. Elliott Archer, Carol A. Archer. (yhp) [EOD 06/19/98] [97-2003]

6/22/98 45 Objection by the Plaintiffs, Carol A. Archer A. Elliott Archer to [19-1] Affidavit by Harry G. Gordon. (yhp) [EOD 06/23/98] [97-2003]

6/23/98 -- Hearing re: [42-4] Motion to Award Expenses, Including Attorneys' fees by A. Elliott Archer, Carol A. Archer Cntd for 9:30 6/30/98 at Courtroom #1, Greensboro, [42-3] Motion to Strike all Defenses of Defendant, Arlene L. Warner and render Judgment for Plaintiffs by A. Elliott Archer, Carol A. Archer Cntd for 9:30 6/30/98 at Courtroom #1, Greensboro, [42-2] Motion to Deem all Requests for Admissions to be Admitted by A. Elliott Archer, Carol A. Archer Cntd for 9:30 6/30/98 at Courtroom #1, Greensboro, [42-1] Motion to Compel Discovery by A. Elliott Archer, Carol A. Archer Cntd for 9:30 6/30/98 at Courtroom #1, Greensboro, [40-1] Motion for Summary

Judgment by Arlene L. Warner Cntd for 9:30 6/30/98 at Courtroom #1, Greensboro (scj) [EOD 06/23/98] [97-2003]

6/23/98 46 Affidavit of Plaintiff A. Elliott Archer in Opposition to Motion for Summary Judgment by Arlene L. Warner. (yhp) [EOD 06/24/98] [97-2003]

6/23/98 47 Brief by the Plaintiffs, A. Elliott Archer and Carol A. Archer in Opposition to [40-1] Motion for Summary Judgment by Arlene L. Warner. (yhp) [EOD 06/24/98] [97-2003]

6/23/98 48 Response by Plaintiff A. Elliott Archer, Plaintiff Carol A. Archer to [44-1] Response by Arlene L. Warner. (yhp) [EOD 06/24/98] [97-2003]

6/25/98 49 Motion by Plaintiff A. Elliott Archer, Plaintiff Carol A. Archer to file Amended [1-1] Complaint NOS 426 Dischargeability 523. (yhp) [EOD 06/25/98] [97-2003]

6/26/98 -- Hearing re: [49-1] Motion to file Amended [1-1] Complaint NOS 426 Dischargeability 523 by Carol A. Archer, A. Elliott Archer set for 9:30 7/21/98 at Courtroom #1, Greensboro (sad) [EOD 06/26/98] [97-2003]

6/26/98 50 Notice of Hearing re: [49-1] Motion to file Amended [1-1] Complaint NOS 426 Dischargeability 523 by Carol A. Archer, A. Elliott Archer # Notices 7 served by BNC 6/28/98 (sad) [EOD 07/01/98] [97-2003]

6/30/98 -- Hearing re: [42-2] Motion to Deem all Requests for Admissions to be Admitted by A. Elliott Archer, Carol A. Archer Cntd for 9:30 7/14/98 at Courtroom #1, Greensboro, [42-1] Motion to Compel Discovery by A. Elliott Archer, Carol A. Archer Cntd for 9:30 7/14/98 at Courtroom #1, Greensboro, [40-1] Motion

for Summary Judgment by Arlene L. Warner Cntd for 9:30 7/14/98 at Courtroom #1, Greensboro (scj) [EOD 07/06/98] [97-2003]

7/1/98 -- Hearing re: [49-1] Motion to file Amended [1-1] Complaint NOS 426 Dischargeability 523 by Carol A. Archer, A. Elliott Archer set for 9:30 7/14/98 at Courtroom #1, Greensboro (yhp) [EOD 07/01/98] [97-2003]

7/1/98 51 Notice of Hearing re: [49-1] Motion to file Amended [1-1] Complaint NOS 426 Dischargeability 523 by Carol A. Archer, A. Elliott Archer # Notices 7 on 7/3/98 (yhp) [EOD 07/07/98] [97-2003]

7/14/98 -- Hearing re: [42-4] Motion to Award Expenses, Including Attorneys' fees by A. Elliott Archer, Carol A. Archer Cntd for 9:30 7/21/98 at Courtroom #1, Greensboro, [42-3] Motion to Strike all Defenses of Defendant, Arlene L. Warner and render Judgment for Plaintiffs by A. Elliott Archer, Carol A. Archer Cntd for 9:30 7/21/98 at Courtroom #1, Greensboro, [42-2] Motion to Deem all Requests for Admissions to be Admitted by A. Elliott Archer, Carol A. Archer Cntd for 9:30 7/21/98 at Courtroom #1, Greensboro, [42-1] Motion to Compel Discovery by A. Elliott Archer, Carol A. Archer Cntd for 9:30 7/21/98 at Courtroom #1, Greensboro, [40-1] Motion for Summary Judgment by Arlene L. Warner cntd for 9:30 7/21/98 at Courtroom #1, Greensboro, [49-1] Motion to file Amended [1-1] Complaint NOS 426 Dischargeability 523 by Carol A. Archer, A. Elliott Archer Cntd for 9:30 7/21/98 at Courtroom #1, Greensboro (scj) [EOD 07/14/98] [97-2003]

7/21/98 -- Hearing re: [42-4] Motion to Award Expenses, Including Attorneys' fees by A. Elliott Archer, Carol A. Archer Cntd for 9:30 8/4/98 at Courtroom #1, Greensboro, [42-3] Motion to Strike all Defenses of Defendant, Arlene L. Warner and render Judgment for Plaintiffs by A. Elliott Archer, Carol A. Archer Cntd for 9:30 8/4/98 at Courtroom #1, Greensboro, [42-2] Motion to Deem all Requests for Admissions to be Admitted by A. Elliott Archer, Carol A. Archer Cntd for 9:30 8/4/98 at Courtroom #1, Greensboro, [42-1] Motion to Compel Discovery by A. Elliott Archer, Carol A. Archer Cntd for 9:30 8/4/98 at Courtroom #1, Greensboro, [40-1] Motion for Summary Judgment by Arlene L. Warner Cntd for 9:30 8/4/98 at Courtroom #1, Greensboro, [49-1] Motion to file Amended [1-1] Complaint NOS 426 Dischargeability 523 by Carol A. Archer, A. Elliott Archer cntd for 9:30 8/4/98 at Courtroom #1, Greensboro (scj) [EOD 07/21/98] [97-2003]

8/4/98 -- Hearing re: [49-1] Motion to file Amended [1-1] Complaint NOS 426 Dischargeability 523 by Carol A. Archer, A. Elliott Archer cntd for 9:30 8/11/98 at Courtroom #1, Greensboro, [42-4] Motion to Award Expenses, Including Attorneys' fees by A. Elliott Archer, Carol A. Archer cntd for 9:30 8/11/98 at Courtroom #1, Greensboro, [42-3] Motion to Strike all Defenses of Defendant, Arlene L. Warner and render Judgment for Plaintiffs by A. Elliott Archer, Carol A. Archer cntd for 9:30 8/11/98 at Courtroom #1, Greensboro, [42-2] Motion to Deem all Requests for Admissions to be Admitted by A. Elliott Archer, Carol A. Archer cntd for 9:30 8/11/98 at Courtroom #1,

Greensboro, [42-1] Motion to Compel Discovery by A. Elliott Archer, Carol A. Archer cntd for 9:30 8/11/98 at Courtroom #1, Greensboro (jdj) [EOD 08/05/98] [97-2003]

8/11/98 -- Hearing re: [49-1] Motion to file Amended [1-1] Complaint NOS 426 Dischargeability 523 by Carol A. Archer, A. Elliott Archer Cntd for 9:30 9/1/98 at Courtroom #1, Greensboro, [42-3] Motion to Strike all Defenses of Defendant, Arlene L. Warner and render Judgment for Plaintiffs by A. Elliott Archer, Carol A. Archer Cntd for 9:30 9/1/98 at Courtroom #1, Greensboro, [42-2] Motion to Deem all Requests for Admissions to be Admitted by A. Elliott Archer, Carol A. Archer Cntd for 9:30 9/1/98 at Courtroom #1, Greensboro, [42-1] Motion to Compel Discovery by A. Elliott Archer, Carol A. Archer Cntd for 9:30 9/1/98 at Courtroom #1, Greensboro, [40-1] Motion for Summary Judgment by Arlene L. Warner Cntd for 9:30 9/1/98 at Courtroom #1, Greensboro (scj) [EOD 08/12/98] [97-2003]

9/1/98 -- Hearing re: [49-1] Motion to file Amended [1-1] Complaint NOS 426 Dischargeability 523 by Carol A. Archer, A. Elliott Archer Cntd for 9:30 9/15/98 at Courtroom #1, Greensboro, [42-4] Motion to Award Expenses, Including Attorneys' fees by A. Elliott Archer, Carol A. Archer Cntd for 9:30 9/15/98 at Courtroom #1, Greensboro, [42-3] Motion to Strike all Defenses of Defendant, Arlene L. Warner and render Judgment for Plaintiffs by A. Elliott Archer, Carol A. Archer Cntd for 9:30 9/15/98 at Courtroom #1, Greensboro, [42-2] Motion to Deem all Requests for Admissions to be Admitted by A. Elliott Archer, Carol A. Archer Cntd for 9:30 9/15/98 at Courtroom

		#1, Greensboro, [42-1] Motion to Compel Discovery by A. Elliott Archer, Carol A. Archer Cntd for 9:30 9/15/98 at Courtroom #1, Greensboro, [40-1] Motion for Summary Judgment by Arlene L. Warner cntd for 9:30 9/15/98 at Courtroom #1, Greensboro (scj) [EOD 09/01/98] [97-2003]
9/9/98	52	Amended [38-1] Response and [37-1] Response. Filed by: Defendant Arlene L. Warner to the Plaintiffs' First Separate Request for Admissions (yhp) [EOD 09/10/98] [97-2003]
9/15/98	--	Hearing held re: [40-1] Motion for Summary Judgment by Arlene L. Warner, [49-1] Motion to file Amended [1-1] Complaint NOS 426 Dischargeability 523 by Carol A. Archer, A. Elliott Archer, [42-4] Motion to Award Expenses, Including Attorneys' fees by A. Elliott Archer, Carol A. Archer, [42-3] Motion to Strike all Defenses of Defendant, Arlene L. Warner and render Judgment for Plaintiffs by A. Elliott Archer, Carol A. Archer, [42-2] Motion to Deem all Requests for Admissions to be Admitted by A. Elliott Archer, Carol A. Archer, [42-1] Motion to Compel Discovery by A. Elliott Archer, Carol A. Archer. (scj) [EOD 09/15/98] [97-2003]
9/16/98	53	Response by Defendant/Arlene L. Warner to Plaintiff/Carol Archer's First Set of Interrogatories and Request for Production of Documents. (yhp) [EOD 09/16/98] [97-2003]
10/5/98	54	Order Denying [40-1] Motion for Summary Judgment by Arlene L. Warner Denying [42-4] Motion to Award Expenses, Including Attorneys' fees by A. Elliott Archer, Carol A. Archer Denying [42-3] Motion to Strike all Defenses of Defendant, Arlene L. Warner and

		render Judgment for Plaintiffs by A. Elliott Archer, Carol A. Archer Denying [42-2] Motion to Deem all Requests for Admissions to be Admitted by A. Elliott Archer, Carol A. Archer Denying [42-1] Motion to Compel Discovery by A. Elliott Archer, Carol A. Archer Denying [49-1] Motion to file Amended [1-1] Complaint NOS 426 Dischargeability 523 by Carol A. Archer, A. Elliott Archer (yhp) [EOD 10/06/98] [97-2003]
12/10/98	--	Status Hearing set for 9:30 12/29/98 at Courtroom #1, Greensboro (yhp) [EOD 12/10/98] [97-2003]
12/10/98	55	Notice of Hearing re: [0-0] Status Hearing # Notices 7 on 12/12/98 (yhp) [EOD 12/15/98] [97-2003]
12/18/98	56	Motion by (Mercedes O. Chut)/Frank Joseph Chut for Defendant Arlene L. Warner, to Withdraw as Attorney of Record. (yhp) [EOD 12/18/98] [97-2003]
12/21/98	57	Order Granting [56-1] Motion to Withdraw as Attorney of Record by Frank Joseph Chut. Involvement of attorney Frank Joseph Chut for Arlene L. Warner, (yhp) [EOD 12/22/98] [97-2003]
12/29/98	--	Hearing re: [0-0] Hearing Status Hearing set for 9:30 2/2/99 at Courtroom #1, Greensboro (scj) [EOD 12/29/98] [97-2003]
2/2/99	--	Status Hearing held (scj) [EOD 02/02/99] [97-2003]
2/2/99	58	Order - parties shall file and serve final pretrial disclosures by 4/66/99; and to schedule Hearing on:([0-0] Trial set for 9:30 6/1/99 at Courtroom #1, Greensboro) (yhp) [EOD 02/04/99] [97-2003]

4/6/99	59	Motion by the Plaintiffs, A. Elliott Archer and Carol A. Archer to Extend the time to Comply with Order on Pre-Trial Disclosures until April 28, 1999. (yhp) [EOD 04/09/99] [97-2003]
4/9/99	60	Consent Order Granting [59-1] Motion to Extend the time to Comply with Order on Pre-Trial Disclosures until April 28, 1999 by Carol A. Archer, A. Elliott Archer (yhp) [EOD 04/09/99] [97-2003]
4/28/99	61	Plaintiffs' Pre-Trial Disclosure (yhp) [EOD 04/28/99] [97-2003]
5/12/99	62	Second Motion by the Plaintiffs, A. Elliott Archer and Carol A. Archer to Compel Discovery; for Sanctions; and to Strike Defenses. (yhp) [EOD 05/13/99] [97-2003]
5/14/99	63	Pre-trial Disclosure of Defendant, Arlene L. Warner and Objections to Plaintiffs' Pre-Trial Disclosure. (yhp) [EOD 05/19/99] [97-2003]
5/14/99	63	Pre-Trial Disclosure of Defendant, Arlene L. Warner and Objections to Plaintiffs' Pre-trial Disclosure (this is the same document as document #63, therefore, there will be no scanned image) [61-1] Document by Carol A. Archer, A. Elliott Archer. (yhp) [EOD 05/19/99] [97-2003]
5/17/99	--	Hearing re: [62-1] Motion to Compel Discovery by Carol A. Archer, A. Elliott Archer set for 9:30 5/25/99 at Courtroom #1, Greensboro, [62-2] Motion for Sanctions by Carol A. Archer, A. Elliott Archer set for 9:30 5/25/99 at Courtroom #1, Greensboro, [62-3] Motion to Strike Defenses. by Carol A. Archer, A. Elliott Archer set for 9:30 5/25/99 at Courtroom #1, Greensboro (dkp) [EOD 05/17/99] [97-2003]

5/17/99	64	Motion by the Defendant, Arlene L. Warner for Summary Judgment. (yhp) [EOD 05/21/99] [97-2003]
5/17/99	72	Notice of Hearing re: [62-1] Motion to Compel Discovery by Carol A. Archer, A. Elliott Archer, [62-2] Motion for Sanctions by Carol A. Archer, A. Elliott Archer, [62-3] Motion to Strike Defenses. by Carol A. Archer, A. Elliott Archer # Notices (sad) [EOD 06/03/99] [97-2003]
5/24/99	65	Objection by the Plaintiffs, A. Elliott Archer Carol A. Archer to [63-1] Late Filed Exhibits and Witnesses Identified by Defendant, Arlene L. Warner; and Renewed Motion to Strike Defenses. (yhp) [EOD 05/24/99] [97-2003]
5/25/99	--	Hearing re: [62-1] Motion to Compel Discovery by Carol A. Archer, A. Elliott Archer Cntd for 9:30 6/1/99 at Courtroom #1, Greensboro (scj) [EOD 05/26/99] [97-2003]
5/26/99	--	Hearing re: [65-1] Objection by Carol A. Archer, A. Elliott Archer set for 9:30 6/1/99 at Courtroom #1, Greensboro, [64-1] Motion for Summary Judgment by Arlene L. Warner set for 9:30 6/1/99 at Courtroom #1, Greensboro, [63-1] Objection by Arlene L. Warner set for 9:30 6/1/99 at Courtroom #1, Greensboro (yhp) [EOD 05/26/99] [97-2003]
5/26/99	74	Notice of Hearing re: [65-1] Objection by Carol A. Archer, A. Elliott Archer, [64-1] Motion for Summary Judgment by Arlene L. Warner, [63-1] Document by Arlene L. Warner, [63-1] Objection by Arlene L. Warner (yhp) [EOD 06/04/99] [97-2003]
5/27/99	66	Objection by Plaintiff A. Elliott Archer, Plaintiff Carol A. Archer to [64-1] Second Motion

for Summary Judgment by Arlene L. Warner. (yhp) [EOD 05/28/99] [97-2003]

5/27/99 67 Renewed Motion by Plaintiff A. Elliott Archer, Plaintiff Carol A. Archer to Amend [1-1] Complaint NOS 426 Dischargeability 523. (yhp) [EOD 05/28/99] [97-2003]

5/28/99 68 Plaintiffs, A. Elliott Archer and Carol A. Archer's Brief (yhp) [EOD 06/01/99] [97-2003]

5/28/99 69 Affidavit of Harry G. Gordon for Plaintiff A. Elliott Archer, Plaintiff Carol A. Archer. (yhp) [EOD 06/01/99] [97-2003]

5/28/99 75 Bankruptcy Noticing Center Certificate of Service [74-1] Hearing Notice, [65-1] Objection by Carol A. Archer, A. Elliott Archer, [64-1] Motion for Summary Judgment by Arlene L. Warner, [63-1] Objection by Arlene L. Warner, [63-1] Document by Arlene L. Warner (yhp) [EOD 06/04/99] [97-2003]

6/1/99 70 Brief by Defendant Arlene L. Warner in Support of [64-1] Motion for Summary Judgment by Arlene L. Warner. (yhp) [EOD 06/01/99] [97-2003]

6/1/99 - Hearing held re: [62-3] Motion to Strike Defenses. by Carol A. Archer, A. Elliott Archer, [62-2] Motion for Sanctions by Carol A. Archer, A. Elliott Archer, [62-1] Motion to Compel Discovery by Carol A. Archer, A. Elliott Archer, [65-1] Objection by Carol A. Archer, A. Elliott Archer, [63-1] Objection by Arlene L. Warner, [64-1] Motion for Summary Judgment by Arlene L. Warner, [67-1] Motion to Amend [1-1] Complaint NOS 426 Dischargeability 523 by Carol A. Archer, A. Elliott Archer. (scj) [EOD 06/04/99] [97-2003]

6/2/99 71 Order Denying [62-3] Motion to Strike Defenses. by Carol A. Archer, A. Elliott Archer Denying [62-2] Motion for Sanctions by Carol A. Archer, A. Elliott Archer Denying [62-1] Motion to Compel Discovery by Carol A. Archer, A. Elliott Archer Denying [65-1] Objection by Carol A. Archer, A. Elliott Archer Denying [63-1] Objection by Arlene L. Warner Denying [64-1] Motion for Summary Judgment by Arlene L. Warner Denying [67-1] Motion to Amend [1-1] Complaint NOS 426 Dischargeability 523 by Carol A. Archer, A. Elliott Archer, to schedule Hearing on:([1-1] Complaint NOS 426 Dischargeability 523 Trial Hearing set for 9:30 6/28/99 at Courtroom #1, Greensboro) (yhp) [EOD 06/02/99] [97-2003]

6/3/99 73 Bankruptcy Noticing Center Certificate of Service [0-0] Hearing, [62-1] Motion to Compel Discovery by Carol A. Archer, A. Elliott Archer, [62-2] Motion for Sanctions by Carol A. Archer, A. Elliott Archer, [62-3] Motion to Strike Defenses. by Carol A. Archer, A. Elliott Archer (sad) [EOD 06/03/99] [97-2003]

6/11/99 76 Motion by Plaintiff A. Elliott Archer, Plaintiff Carol A. Archer to continue Trial Hearing. (yhp) [EOD 06/14/99] [97-2003]

6/17/99 77 Order Granting [76-1] Motion to continue Trial Hearing by Carol A. Archer, A. Elliott Archer (cph) [EOD 06/22/99] [97-2003]

6/17/99 -- Trial set for 9:30 8/26/99 at Courtroom #1, Greensboro (cph) [EOD 06/22/99] [97-2003]

8/6/99 78 Motion by Plaintiff A. Elliott Archer, Plaintiff Carol A. Archer to file Amended [61-1] Pre-Trial Disclosures. (yhp) [EOD 08/09/99] [97-2003]

8/13/99	79	Motion by the Defendant, Arlene L. Warner for Judgment on the Pleadings. (yhp) [EOD 08/16/99] [97-2003]
8/13/99	80	Motion by the Defendant, Arlene L. Warner in Limine (yhp) [EOD 08/16/99] [97-2003]
8/13/99	81	Brief by Defendant Arlene L. Warner in Support of [79-1] Motion for Judgment on the Pleadings. by Arlene Warner, and [80-1] Motion in Limine by Arlene L. Warner. (yhp) [EOD 08/16/99] [97-2003]
8/16/99	--	Hearing re: [79-1] Motion for Judgment on the Pleadings. by Arlene L. Warner set for 9:30 8/24/99 at Courtroom #1, Greensboro, [80-1] Motion in Limine by Arlene L. Warner set for 9:30 8/24/99 at Courtroom #1, Greensboro (yhp) [EOD 08/16/99] [97-2003]
8/16/99	82	Order Granting [78-1] Motion to file Amended [61-1] Pre-Trial Disclosures. by Carol A. Archer, A. Elliott Archer (sad) [EOD 08/16/99] [97-2003]
8/16/99	83	Motion by Defendant, Arlene L. Warner to Shorten Notice of Hearing Re: Motion for Judgment on the Pleadings and Motion in Limine, so that said Motions can be heard on 8/24/99. (yhp) [EOD 08/16/99] [97-2003]
8/16/99	86	Notice of Hearing re: [79-1] Motion for Judgment on the Pleadings. by Arlene L. Warner, [80-1] Motion in Limine by Arlene L. Warner (yhp) [EOD 08/20/99] [97-2003]
8/18/99	84	Order Granting [83-1] Motion to Shorten Notice of Hearing Re: Motion for Judgment on the Pleadings and Motion in Limine, so that said Motions can be heard on 8/24/99. by Arlene L. Warner (yhp) [EOD 08/18/99] [97-2003]

8/18/99	85	Brief and Objection by the Plaintiffs, Carol A. Archer and A. Elliott Archer in Support of [79-1] Motion for Judgment on the Pleadings. by Arlene L. Warner. (this Brief and Objection are the SAME document, therefore, there will no IMAGE) (yhp) [EOD 08/19/99] [97-2003]
8/18/99	85	Supplemental Brief and Objection by Plaintiff Carol A. Archer, Plaintiff A. Elliott Archer to [79-1] Motion for Judgment on the Pleadings. by Arlene L. Warner. (this is the SAME document as the Brief) (yhp) [EOD 08/19/99] [97-2003]
8/18/99	87	Bankruptcy Noticing Center Certificate of Service [86-1] Hearing Notice, [79-1] Motion for Judgment on the Pleadings. by Arlene L. Warner, [80-1] Motion in Limine by Arlene L. Warner (yhp) [EOD 08/20/99] [97-2003]
8/24/99	88	Plaintiff's Trial Brief (yhp) [EOD 08/24/99] [97-2003]
8/24/99	--	Hearing held re: [80-1] Motion in Limine by Arlene L. Warner, [79-1] Motion for Judgment on the Pleadings. by Arlene L. Warner. (scj) [EOD 08/24/99] [97-2003]
8/24/99	89	Order (issues will be severed, pursuant to Rule 16(c) of the Federal Rules of Civil Procedures which is incorporated into Rule 7016 of the Federal Rules of Bankruptcy Procedure, and tried in this matter) (yhp) [EOD 08/24/99] [97-2003]
8/24/99	90	Order Denying [80-1] Motion in Limine by Arlene L. Warner Denying [79-1] Motion for Judgment on the Pleadings. by Arlene L. Warner (yhp) [EOD 08/24/99] [97-2003]
8/26/99	--	Trial Hearing held (scj) [EOD 08/30/99] [97-2003]

8/30/99	91	Judgment FOR Defendant Arlene L. Warner AGAINST Plaintiff Carol A. Archer, Plaintiff A. Elliott Archer (this action is hereby DISMISSED with Prejudice as to Defendant/Arlene L. Warner) (yhp) [EOD 08/30/99] [97-2003]
8/30/99	92	Memorandum Opinion regarding: [91-1] Judgment Order by A. Elliott Archer, Carol A. Archer, Arlene L. Warner. (yhp) [EOD 08/30/99] [97-2003]
9/9/99	93	(Appeal File) Notice of Appeal by Carol A. Archer, A. Elliott Archer Appeal Designation due: 9/19/99 re: [91-1] Judgment Order by A. Elliott Archer, Carol A. Archer, Arlene L. Warner (service was made on parties in interest by Yasmin H. Power) (yhp) [EOD 09/09/99] [97-2003]
9/20/99	94	"(Appeal File)" Designation by A. Elliott Archer, Carol A. Archer of Contents for Inclusion in Record on Appeal re: [93-1] Notice Appeal by A. Elliott Archer, Carol A. Archer; (sad) [EOD 09/20/99] [97-2003]
9/30/99	95	"(Appeal File)" Designation by Arlene L. Warner of Contents for Inclusion in Record on Appeal and Statement of the Issues on Appeal re: [93-1] Notice Appeal by A. Elliott Archer, Carol A. Archer; Transmission due: 10/30/99 (sad) [EOD 10/01/99] [97-2003]
10/18/99	96	Transcript of Hearing re: Trial held on 8/26/99 (sad) [EOD 10/18/99] [97-2003]
10/19/99	--	"(Appeal File)" Transmission of Record on Appeal to District Court re: [93-1] Notice Appeal by A. Elliott Archer, Carol A. Archer (sad) [EOD 10/19/99] [97-2003]

10/19/99	97	"(Appeal File)" Notice of Docketing Record o Appeal re: [93-1] (1:99CV00924) (sad) [EOD 10/19/99] [97-2003]
11/17/99	98	(Appeal File) Amended [94-1] Appeal Designation (Amended to add Statement of Issues only). Filed by: Plaintiff A. Elliott Archer, Plaintiff Carol A. Archer (sad) [EOD 11/18/99] [97-2003]
11/18/99	99	(Appeal File) Transmission of Addendum to Record on Appeal [93-1] Notice Appeal by A. Elliott Archer, Carol A. Archer transmitted to District Court (1:99CV000924) (sad) [EOD 11/19/99] [97-2003]
10/16/00	100	"(Appeal File)" Final Order entered on 9/27/00 by Judge Bullock Affirming the Bankruptcy Court's Judgment and Dismissing this Appeal re: [91-1] Judgment Order by A. Elliott Archer, Carol A. Archer, Arlene L. Warner (yhp) [EOD 10/16/00] [97-2003]
10/16/00	101	Memorandum Opinion regarding: [100-1] District Court Order. (yhp) [EOD 10/16/00] [97-2003]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division
Guilford County

File No. 93 CRS 2075

STATE VERSUS
Defendant LEONARD L. WARNER

Date of Offense: 3/22/92 - 5/22/92
Offense in Violation of G.S. 14-100

INDICTMENT
OBTAINING PROPERTY BY
FALSE PRETENSES

The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did knowingly and designedly with intent to cheat and defraud obtain and attempt to obtain good and lawful United States Currency in the amount of six hundred and eighty five thousand dollars ($685,000.00) from A. Elliott Archer by means of a false pretense which was calculated to deceive and did deceive.

The false pretense consisted of the following: the defendant misrepresented the financial condition of Greensboro Awning Company, Greensboro Fence Company and A&A Fence Company in negotiating for the sale of these companies to Archer.

Sold assets, received $681,585 worth of assets

Letter

Signature of Prosecutor

/s/ Howard P. Neuman

WITNESSES

☒ Ken Norris - GCSD

The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and, after hearing testimony, this bill was found to be:

☒ A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.

☐ NOT A TRUE BILL

Date: SEP 20, 1993

Signature of Jury Foreman

/s/ William P. Rynard [illegible]

STATE OF NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
92 CVS 7777

A. E. ARCHER COMPANIES; INC.,
A. ELLIOTT ARCHER, AND CAROL
A. ARCHER, Plaintiffs,
vs.
WARNER MANUFACTURING, INC.,
LEONARD L. WARNER, STUART
E. WARNER, ARLENE WARNER,
and WEBB LEXINGTON CORP., Defendants.

AMENDED COMPLAINT
(Jury Trial Demanded)

Plaintiffs, complaining of defendants, allege and say:

PARTIES AND INTERRELATIONSHIPS

1. Plaintiff A. E. Archer Companies, Inc. ("Archer Companies") is a North Carolina corporation having had an office and place of business in Guilford County, North Carolina.

2. Plaintiff A. Elliott Archer ("Elliott Archer") is an individual and a resident of Guilford County, North Carolina.

3. Plaintiff Carol A. Archer ("Carol Archer") is an individual and a resident of Guilford County, North Carolina.

4. Plaintiff A. Elliott Archer is the sole shareholder of Archer Companies, its chief executive officer, and a member of its Board of Directors. Elliott Archer and Carol Archer are husband and wife.

5. Defendant Warner Manufacturing, Inc. ("Warner Manufacturing") is a corporation incorporated under the laws

of the State of North Carolina on February 1, 1991, with its Registered office located at 1004 Rollingwood Drive, Greensboro, Guilford County, North Carolina. Its Registered Agent is defendant Leonard L. Warner.

6. Defendant Leonard L. Warner ("Warner") is an individual and a resident of Guilford County, North Carolina.

7. Defendant Stuart E. Warner is an individual and a resident of Guilford County, North Carolina.

8. Defendant Arlene Warner is an individual and a resident of Guilford County, North Carolina.

9. Defendant Webb Lexington Corp. is a North Carolina corporation with its Registered Office located at 1004 Rollingwood Drive, Greensboro, Guilford County, North Carolina. Its Registered Agent is defendant Leonard L. Warner.

10. Defendants Leonard Warner and Arlene Warner are husband and wife. Defendant Stuart Warner is the son of defendants Leonard Warner and Arlene Warner. Defendants Leonard Warner and Arlene Warner reside at 1004 Rollingwood Drive, Greensboro, North Carolina, the Registered Office for both defendant corporations.

11. Plaintiffs are informed and believe and therefore allege that defendant Warner Manufacturing is owned by defendants Leonard Warner and Arlene Warner as its sole shareholders, that defendant Leonard Warner and Arlene Warner served as its directors, that its officers were defendants Leonard Warner, Arlene Warner and Stuart Warner, and the Corporation was formerly named Indian Tuff-Tank, Inc. and was used in the purchase and sale of a business by that name.

12. Defendant Webb Lexington Corp. is owned one hundred percent (100%) by defendant Arlene Warner who is also Secretary of the corporation. Defendant Leonard Warner is the President and Treasurer of defendant Webb Lexington Corp. Defendant Webb Lexington Corp. has its offices in the home of defendants Leonard Warner and Arlene

Warner at 1004 Rollingwood Drive, Greensboro, North Carolina. Defendants Leonard Warner and Stuart Warner claim to be "independent contractors" who provide "consulting services" at the request of defendant Webb Lexington Corp. Defendant Webb Lexington Corp. claims to have had a contract with defendant Warner Manufacturing, Inc. whereby it provided consulting services to defendant Warner Manufacturing, Inc. and engaged defendants Leonard Warner and Stuart Warner to provide the actual consulting services.

FACTUAL ALLEGATIONS

13. During or about the early part of the month of March, 1992, plaintiff Elliott Archer caused to be published in the News and Record, a newspaper of general circulation in Guilford County, North Carolina, a classified advertisement expressing an interest in purchasing a business in the Triad area. The advertisement included the following statements: "Particular interest in profitable business which current owner is interested in selling for retirement or other personal reasons." (Emphasis added)

14. On or about March 22, 1992, in response to plaintiff Elliott Archer's advertisement, defendant Leonard Warner sent a letter to the address published in plaintiff Elliott Archer's advertisement, stating that Leonard Warner was the owner of a profitable light manufacturing company with annual sales in the range of $2,000,000.00 that had been in business for over forty years.

15. On or about April 2, 1992, plaintiff Elliott Archer met with defendant Leonard Warner and discussed the business that defendant Leonard Warner owned, the type of business, the assets and financial condition of the business, and its prior financial performance. During the course of this discussion, defendant Leonard Warner disclosed to plaintiff Elliott Archer that the company which Leonard Warner was interested in selling was Warner Manufacturing, Inc. (defendant herein), doing business as Greensboro Awning Company, Greensboro Fence Co. and A&A Fence Co. (collectively, the "Companies"). At the same meeting, defendant Leonard Warner represented to plaintiff Elliott Archer that the Companies were very profitable and offered an outstanding profit opportunity.

16. On or about April 23, 1992, defendant Leonard Warner and plaintiff Elliott Archer met for the second time. At this meeting defendant Leonard Warner delivered to Archer a copy of a document that he represented to be the income statement for the Companies as of November 30, 1991 when it was owned by the previous owner, and which purported to present, among other things, net income for the year to date in the amount of $38,376.00. A true and correct copy of the November 31, 1991 income statement as delivered by defendant Leonard Warner to plaintiff Elliott Archer is attached hereto as **Exhibit 1** and hereby expressly incorporated by reference.

17. Contrary to the representations of defendant Leonard Warner, the November 30, 1991 income statement (**Exhibit 1**) was in fact a document created by defendant Leonard Warner which did not in fact show the net income of the prior owner and was not in fact the same statement of the prior owner.

18. Contrary to the $38,376 net income shown by defendant Leonard Warner on the November 30, 1991 income statement created by defendant Leonard Warner (**Exhibit 1**), the prior owner's actual income statement showed a loss of approximately $130,000.

19. At the same April 23, 1992 meeting defendant Leonard Warner delivered to plaintiff Elliott Archer a copy of documents which purported to be financial statements for the Companies, a true and correct copy of which is attached hereto as **Exhibit 2** and hereby expressly incorporated by reference, consisting of an income statement and balance sheet, both dated as of March 31, 1992, and that contained the following misrepresentations:

a. Net income for the year to date was represented to be in the amount of $157,216.38, when in fact the Companies' had zero income.

b. Total assets net of petty cash and checking deposits were represented to be in the amount of $840,470.00, when in fact total assets were substantially less.

c. Accounts payable (trade) were represented to be in the amount of $49,453.62.

d. Notes Payable were represented to be in the amount of $20,000.00 when in fact substantial capital had been borrowed from defendant Webb Lexington and defendant Leonard Warner but the debt and interest payments/accruals were deliberately omitted to overstate income.

20. Defendant Leonard Warner also delivered to plaintiff Elliott Archer defendant Leonard Warner's evaluation of the Companies, attached hereto as **Exhibit 3** and hereby expressly incorporated by reference, which represented that the Companies were earning $360,000 per year, when in fact the Companies were not profitable and were losing money.

21. Thereafter, during or about the month of April or May 1992, defendant Leonard Warner deceived plaintiff Elliott Archer or his CPA by making the following misstatements and or misrepresentations:

a. Defendant Leonard Warner told plaintiff Elliott Archer that there were no other financial statements for the companies nor was there any further financial information for the Companies relating to periods prior to November 30, 1991.

b. Defendant Leonard Warner understated accounts payable by approximately $35,000, thus overstating the value of the assets and greatly overstating the profitably of the Companies.

c. Defendant Leonard Warner, with the knowledge and cooperation of defendants Arlene Warner and Webb Lexington Corp., failed to reveal the existence of a $100,000 loan to the prior owner, the interest charges on the loan, another loan from defendant Webb Lexington Corp. and interest charges for that loan, and a loan by defendant Leonard Warner to the business and interest on that loan.

d. Defendant Leonard Warner, with the knowledge and cooperation of defendant Stuart Warner, falsely represented that the business had in excess of $30,000 in "Inventory-Finished Goods" when in fact the goods so identified were rejects or defective manufactured items that had virtually no value.

e. Defendant Leonard Warner, with the knowledge and cooperation of defendant Stuart Warner, grossly overstated and misrepresented the value of equipment being purchased by plaintiff Elliott Archer and Archer Companies.

f. Defendant Leonard Warner deliberately and falsely understated labor costs by providing to plaintiffs' CPA, during due diligence, what said defendant represented to be total costs for labor, which labor costs in fact included only factory labor and did not include field labor.

22. During the period prior to closing, defendant Leonard Warner directed employees of defendant Warner Manufacturing not to post accounts payable in order that plaintiff Elliott Archer would not know about substantial accounts payable outstanding as of the date of closing.

23. Defendant Leonard Warner refused to allow plaintiff Elliott Archer or his CPA to confer with employees of the Companies, and said employees later, after the sale, revealed to plaintiff Elliott Archer that the business was in fact losing substantial monies, contrary to representations of defendant Leonard Warner.

24. Defendant Leonard Warner was observed by an employee of defendant Warner Manufacturing removing large volumes of financial records prior to the sale of the business. Plaintiffs are informed and believe and therefore allege that these were the records of the prior owner, which records revealed the losses the Companies had experienced.

25. Plaintiff Elliott Archer and defendant Leonard Warner structured the sale of the business as an asset sale for tax and liability reasons. Plaintiff Elliott Archer sought to acquire and did acquire an ongoing business with customer accounts, goodwill, trained employees, ongoing operations, trade names, accounts receivable and so forth. However, by structuring the sale as an "asset sale," as is customarily done in such sales, plaintiffs could recapitalize assets for tax purposes and avoid taking on warranty and other liabilities of former owners of the business. Plaintiffs also agreed to purchase certain accounts payable as well as accounts receivable. Defendant Leonard Warner agreed to operate and maintain the business in its normal and regular course between the date of contract and closing date.

26. On or about May 8, 1992, defendant Leonard Warner delivered to plaintiff Elliott Archer copies of certain documents which purported to be financial statements for the Companies, consisting of a purported Income Statement and Balance Sheet dated as of April 30, 1992, and which purported to present, among other things, the following information:

a. Net Income for the year to date in the amount of $128,049.58.

b. Total Assets net of petty cash and checking deposits in the amount of $754,334.15.

c. Accounts Payable in the amount of $62,172.00.

27. Contrary to the documents delivered by defendant Leonard Warner to plaintiff Elliott Archer on or about May 8, 1992, in fact "Net Income" was less than zero, total assets were substantially less than $754,000, and Accounts Payable

were in fact approximately $35,000 more than the reported $62,172.

28. After negotiations, defendant Warner Manufacturing, acting through defendant Leonard Warner and Stuart Warner, and plaintiff Archer Companies, acting through plaintiff Elliott Archer, executed a certain Asset Purchase Agreement (the "Agreement") dated May 22, 1992, which provided, among other things, for the purchase and sale of the Assets for a total price of $610,000.00, plus payment to defendant Leonard Warner of a consulting fee in the amount of $70,000.00 and the sum of $5,000.00 in consideration of a non-compete agreement. In executing the Agreement, plaintiff Elliott Archer relied on the above-described purported financial statements, the representations and warranties of defendants Leonard Warner, Stuart Warner and Warner Manufacturing as set forth in the Agreement and in the Certificates, and on the representations made by said defendants to plaintiff Elliott Archer prior to the execution of the Agreement.

29. While representing to plaintiff Elliott Archer and the Archer Companies that defendant Warner Manufacturing, Inc. "has operated and maintained the business in its normal and regular course, selling inventory only to customers and replenishing same on a reasonable basis to the extent depleted, and contracting and invoicing in the same manner as customarily done in the past," defendant Leonard Warner and Warner Manufacturing, Inc. in fact accelerated collections of cash and required larger cash downpayments on jobs, all cash to be retained by defendant Warner Manufacturing, while at the same time failing to show a liability on the books of the company for obligations to provide material and labor for the cash down payments collected and retained by defendants.

30. Plaintiff Elliott Archer arranged to borrow $500,000 to be used as part of the consideration for purchase of the Companies. The loan was made to plaintiff Elliott Archer's new corporation formed for the purpose of acquiring the as-

sets of the Companies. Plaintiffs Elliott Archer and Carol Archer both signed guarantees personally obligating themselves to be responsible for the full $500,000 debt.

31. The closing (the "Closing") took place on May 22, 1991. Plaintiff Archer Companies purchased, among other assets, accounts receivable totaling $141,363.76 and accounts payable of $62,172.00. A true and correct copy of the balance sheet included in the closing documents is attached hereto as **Exhibit 4**. Within approximately 30 minutes following the Closing, defendant Leonard Warner provided to plaintiff Elliott Archer an "updated" balance sheet, which balance sheet showed accounts payable of $84,852, an increase of $22,680.

32. Within days of the Closing, plaintiff Elliott Archer learned by examining the company records that in fact accounts payable on date of Closing were approximately $99,000, approximately $35,000 more than had been represented by defendant Leonard Warner. At the same time, actual accounts receivable were not significantly more than as claimed.

33. The additional, undisclosed $35,000 in accounts payable, was very alarming to plaintiffs because i) this meant that the company had $35,000 fewer assets, ii) the company required an immediate cash infusion to deal with the additional $35,000 current debt, and, iii) actual earnings and profits per sale had been grossly overstated by failing to reveal the existence of $35,000 in accounts payable.

34. Unbeknownst to defendants, the computer system sold by defendant Warner Manufacturing, Inc. to plaintiff Archer Companies with the other assets contained within it an income statement of the prior owner, a true and correct copy of which is attached hereto as **Exhibit 5** hereby expressly incorporated by reference. That income statement revealed that the income statement provided by defendant Leonard Warner to plaintiff Elliott Archer in advance of the purchase, **Exhibit 1**, was fictitious and a fraud, and that

rather than showing a profit of $38,376, the prior owner showed a loss of approximately $130,000 during its 11 months of operation in the year 1991.

35. Within the first 30 days of operation, it became apparent to plaintiffs that the business, rather than making $30,000 per month and $360,000 per year as repeatedly represented by defendant Leonard Warner, orally and in writing (**Exhibit 2**), was actually losing money each month and required an immediate infusion of capital in order to survive.

36. Within one week to ten days of Closing, plaintiff Elliott Archer confronted defendant Leonard Warner regarding the unposted accounts payable and the "found" income statement of the prior owner (**Exhibit 5**). Plaintiff Elliott Archer demanded that defendant Leonard Warner buy back the business for the price paid by plaintiff Elliott Archer or refund at least $300,000 of the price paid. Defendant Leonard Warner declined to purchase back the business or refund $300,000 of the price paid.

37. Following the Closing, plaintiff Archer Companies took possession and control of the Assets and of certain business and accounting records relating to the companies. Upon inspection of the Assets and said records, plaintiffs Elliott Archer and Archer Companies determined, subsequent to the Closing, that:

a. The values assigned to machinery and equipment in the purported financial statements furnished by defendants Leonard Warner and Stuart Warner to plaintiff Elliott Archer were greatly in excess of their actual values.

b. The values assigned to the finished goods inventory of the Companies in the aforesaid financial statements were overstated in that the actual finished goods delivered to plaintiff Archer companies consisted of goods that had been for specific jobs and that were unusable on such jobs, with said inventory having no

value beyond scrap value because it was inadequate or unsuitable for most applications.

c. Beginning during or about March 1992 and continuing through the date of Closing defendant Leonard Warner, Stuart Warner and Warner Manufacturing had discontinued the practice of posting to the accounts payable journal of the Companies a substantial number and amount of accounts payable.

d. Beginning during or about early 1992 and continuing through the date of Closing, defendants Leonard Warner and Warner Manufacturing deviated from the Companies' historical practice of deferring the billing of customers until the Companies had completed performance under their contracts with customers. Instead, defendants Leonard Warner, Stuart Warner and Warner Manufacturing caused customers to be billed for work performed prior to completion of the contracts, with defendant Warner Manufacturing retaining the monies received by the Companies on such billings and deliberately failing to reflect on company records the obligation to the customers paying in advance.

e. Defendants Leonard Warner and Warner Manufacturing had included or caused to be included in the purported financial statements furnished to plaintiffs Elliott Archer and Archer Companies, certain assets that were not the property of defendant Warner Manufacturing but were in fact assets belonging to employees.

f.. During or about early March 1992, defendants Leonard Warner and Warner Manufacturing had discontinued the practice of posting to the accounts payable journal of the Companies certain amounts for which the Companies had been billed, resulting in plaintiff Archer Companies' being forced to assume responsibility for a substantial amount of debts of the Companies which had not been disclosed to plaintiffs Elliott Archer or the Archer Companies prior to Closing.

g. The Companies had an operating loss for the year-to-date ended November 30, 1991, in the amount of approximately $130,000.00, rather than net income for the same period in the amount of $38,376.00 as reported on the fabricated income statement (**Exhibit 1**) prepared by defendants Leonard Warner and Warner Manufacturing for said period.

h. The Companies had a net loss for the first quarter of 1992 instead of the approximately $157,000.00 in earnings as represented by defendants Leonard Warner and Warner Manufacturing.

i. The Companies had a net loss for the first four months of 1992 instead of the approximately $128,000.00 in earnings as represented by defendants Leonard Warner, Stuart Warner and Warner Manufacturing.

38. Defendants, acting in concert, also overstated earnings of Warner Manufacturing by diverting expenses to defendant Webb Lexington Corp. Tax records of defendant Warner Manufacturing for tax year 1992, coupled with the sworn deposition testimony of defendant Leonard Warner, reveal that, among other expenses, defendant Warner Manufacturing paid defendant Webb Lexington Corp. $102,750 for "management fees" and another $203,750 for "consulting fees." Capital costs for the operations of Warner Manufacturing were absorbed by defendant Webb Lexington or Leonard and Arlene Warner. Defendant Leonard Warner, acting for all defendants, failed to reveal the existence of a $100,000 debt to the former owner of the business and failed to show the debt or accrued interest. All defendants deliberately withheld from plaintiffs knowledge that the foregoing expenses and costs were not accurately reflected, and the income and asset statements provided by defendant Leonard Warner to plaintiffs showed no payment or accrual of costs for interests, management fees, or consulting fees.

39. All defendants acted in concert to defraud the plaintiffs. Defendant Arlene Warner was the sole stockholder of defendant Webb Lexington Corp., the company that provided substantial undisclosed funds to purchase the Companies to be resold. She was also an officer of defendant Webb Lexington Corp. Defendant Webb Lexington Corp. hired defendants Stuart Warner and Leonard Warner as "consultants" to defendant Warner Manufacturing. As noted above, more than $300,000 of the monies received from the defrauding of the plaintiffs were paid by defendant Warner Manufacturing to defendant Webb Lexington Corp. for "management fees" and "consulting fees." Deposition testimony of defendant Stuart Warner reveals that he received approximately $70,000 as a "bonus" directly from Defendant Warner Manufacturing, notwithstanding the fact that defendant Stuart Warner claimed to be self-employed, acting as a consultant for defendant Webb Lexington Corp., paid by defendant Webb Lexington Corp., and not an employee of defendant, Warner Manufacturing.

40. Defendant Stuart Warner assisted in locating the Companies and acted as a full time employee-called -consultant for himself/Webb Lexington Corp./Warner Manufacturing. He received salary through defendant Webb Lexington Corp. Defendant Stuart Warner received approximately $70,000 as a "bonus" directly from defendant Warner Manufacturing, notwithstanding the fact that defendant Stuart Warner claimed to be self-employed, acting as a consultant for defendant Webb Lexington Corp., paid by defendant Webb Lexington Corp., and not an employee of defendant Warner Manufacturing.

41. Defendant Stuart Warner deliberately misrepresented values of assets purchased by plaintiff Archer Companies and also signed closing documents that were erroneous and fraudulent. Defendant Stuart Warner participated in the fraud additionally by claiming to have made great savings for the Companies through "purchasing activities" and by claiming to have researched and become knowledgeable about the

value of assets being sold. Defendant Stuart Warner participated in the total conspiracy and transfer of assets and fraudulent conveyance of assets and thereafter committed perjury at his deposition rather than reveal the interrelationships of all defendants.

42. All defendants conspired to purchase a distressed company for $250,000 and resell the same at an exorbitant profit--$685,000--by misrepresenting to plaintiffs that the company they had purchased was in fact making a profit of at least $30,000 per month or $360,000 per year, when in fact the business was losing money when acquired by defendants and continued to lose money during the entire six-month period it was owned by defendants or their agent, Warner Manufacturing.

43. Plaintiffs are informed and believe that defendant Leonard Warner has engaged in similar schemes to defraud business buyers in the past, and that all defendants are presently attempting a similar scheme to defraud prospective buyers in the sale of the latest business acquired in the name of defendant Arlene Warner, being Full Knit Hosiery Mills, Inc.

FIRST CLAIM FOR RELIEF
(Breach of Contract)

44. The allegations of Paragraphs 1 through 43 of this Complaint are repleaded and incorporated herein by reference as if fully set forth.

45. Plaintiff Archer Companies seek relief for breach of the representations and warranties set forth in Section 6 of the Agreement as certified by defendant Leonard Warner individually and defendants Leonard Warner and Stuart Warner as the officers of defendant Warner Manufacturing.

46. Said defendants have breached said representations and warranties, in that:

a. Said defendants failed to disclose to Archer Companies certain liabilities and obligations of the

Companies, which, under the Agreement, they were required to disclose.

b. The purported financial statements of the Companies dated April 30, 1992, identified as Exhibit A to the Agreement, were not prepared carefully in the regular way from the books and records of the Companies and are not completely true and accurate.

c. From April 30, 1992 through the Closing, Warner Manufacturing failed to operate and maintain the business of the companies in its normal and regular course.

d. From April 30, 1992, through the Closing, said defendants caused the Companies to fail to contract with and invoice customers in the same manner as customarily done in the past.

e. The representations and warranties set forth in the Agreement and in said defendants' Certificates were false and untrue and incorrect in numerous material respects.

47. As a result of the breach of the Agreement by said defendants as hereinbefore alleged, plaintiff Archer Companies has sustained damages in the amount in excess of $10,000.00 in an amount to be determined according to proof, which plaintiff Archer Companies is entitled by law to recover of and from said defendants, jointly and severally.

SECOND CLAIM FOR RELIEF
(Fraud and Misrepresentation)

48. The allegations of Paragraphs 1 through 47 of this Complaint are repleaded and incorporated herein by reference as if fully set forth.

49. Plaintiffs are informed and believe and therefore allege that defendants prepared, or caused to be prepared, the above-referenced purported financial statements of the companies and that defendants intentionally included or caused to be included therein certain false and inaccurate entries and

information and that defendants furnished such financial information and purported financial statements to Plaintiff Archer Companies and Plaintiff Elliott Archer, representing the same to be accurate and truthful.

50. Plaintiffs are informed and believe that defendants purposefully and intentionally misled and deceived plaintiffs Archer Companies and Elliott Archer by delivering to them the said false and inaccurate financial information and purported financial statements.

51. Plaintiffs are further informed and believe that defendants made the following false representations to Archer Companies and Archer about the business and financial condition of the Companies, knowing said representations to be false, misleading and inaccurate and intending that Archer Companies and Archer rely upon such representations: and that defendants defrauded and deceived Archer Companies and Archer by the following acts or omissions, to-wit:.

a. On or about April 23, 1992, Warner told Archer that there were no other financial statements of the Companies nor any further financial information for the Companies in existence for periods prior to November 30, 1991, the date on which Warner Manufacturing had acquired the Assets, when in truth and in fact there were in existence at that time numerous financial statements of the Companies and a substantial amount of financial information for the Companies for periods prior to November 30, 1991, which information and statements would have disclosed, and did disclose to plaintiffs after the Closing, that the Companies had realized minimal net income or had sustained substantial losses for one or more periods of time prior to November 30, 1991.

b. Purposely and intentionally withheld, suppressed, concealed and failed to deliver, when they had a duty to deliver to plaintiffs Archer Companies and Elliott Archer, the aforesaid financial information and financial statements for periods prior to November 30, 1991;

and in defendants' dealings and negotiations with Archer Companies and Archer on one or more occasions defendants intentionally concealed and suppressed the existence of the same.

c. On one or more occasions prior to the closing, defendants intentionally misrepresented to plaintiffs Archer Companies and Elliott Archer that the Companies had been profitable during the 11-month period immediately prior to acquisition of the Companies by defendant Warner Manufacturing and during the period defendant Warner Manufacturing owned the Companies, knowing full well that in truth and in fact the Companies had realized a minimal amount of net income or had sustained substantial losses during said periods of time.

d. Defendant Leonard Warner, acting for all defendants, provided plaintiffs Archer Companies and Elliott Archer with purported balance sheets for the Companies that contained greatly inflated and unjustified values for the Assets, knowing full well that said values as they appeared thereon were false and substantially overstated, while representing to plaintiffs Archer Companies and Elliott Archer that said values were the actual or approximate value of the Assets, and while defendants knew that in truth and in fact the values of the Assets were substantially less than the values as stated therein, and with defendants having the purpose and intent to mislead and deceive Defendants Archer Companies and Elliott Archer and to induce plaintiff Archer Companies, as purchaser of the Assets, to pay a higher price than the Assets were actually worth.

e. Defendants knew or had a reasonable basis to believe that plaintiffs Archer Companies and Elliott Archer would rely, and had the right to rely, on the aforesaid false and misleading representations, statements and documents which defendants provided to plaintiff Archer Companies and Elliott Archer, and knew

or had a reasonable basis for believing, that such reliance would result, or would be likely to result, in substantial damage and detriment to plaintiffs Archer Companies and Elliott Archer, yet defendants nevertheless made and continued to make such false and misleading statements and representations and to furnish such incorrect, false and misleading documents as hereinbefore alleged.

f. Defendants embarked upon a course of action and a scheme and artifice to defraud Archer Companies and Archer by realizing a substantial, exorbitant and "quick" profit on the resale of the Assets between the period of time beginning on or about December 10, 1991, when defendant Warner Manufacturing purchased the Assets for a total purchase price of $250,000.00, and May 22, 1992, the date of the Closing, at which time Archer Companies paid defendant Warner Manufacturing the sum of $600,000.00 as the balance of the purchase price of the assets (the further sum of $10,000.00 having previously been paid as an earnest money deposit for the purchase of the Assets), and in addition paid defendant Leonard Warner a consulting fee of $70,000.00 and the further sum of $5,000.00 for certain restrictive covenants against competition.

g. Defendants intentionally concealed and failed to disclose, when they had a duty to disclose, to plaintiffs Archer Companies and Elliott Archer the fact that beginning during or about March 1992, and continuing through the date of Closing, Warner and Warner Manufacturing had discontinued the practice of posting to the accounts payable journal of the Companies a substantial number and amount of accounts payable.

h. Defendants intentionally concealed, suppressed and failed to disclose, when they had a duty to disclose, to plaintiffs Archer Companies and Elliott Archer the fact that beginning, during or about early 1992 and continuing through the date of Closing, defendants Warner

and Warner Manufacturing had deviated from the Companies' historical practice of deferring the billing of customers until the Companies had completed performance under their contracts with customers and further failed to disclose, when they had a duty to disclose, to plaintiffs Archer Companies and Elliott Archer that defendants Warner and Warner Manufacturing had caused certain customers of the Companies to be billed for work performed prior to completion of the Companies' contracts with such customers; and intentionally concealed and failed to disclose, when they had a duty to disclose, to plaintiffs Archer Companies and Elliott Archer that the Companies and defendant Warner Manufacturing had received and retained, prior to completion of such contracts, a substantial amount of such customer payments, knowing full well that Archer Companies had agreed to be responsible for labor and materials necessary to complete the performance of such contracts, and would not receive corresponding payment from customers of the Companies under the contracts.

i. Defendants induced plaintiffs Archer Companies and Elliott Archer, as an officer of Archer Companies, to execute the Agreement and further induced plaintiff Archer Companies to purchase the Assets and the "stream of income" of the Companies at a price which defendants knew full well was greatly in excess of the actual or approximate value of the Assets and the Companies' "stream of income."

j. Defendants, acting in concert, in like fashion induced plaintiffs Elliott Archer and Carol Archer to guarantee the $500,000 loan to plaintiff Archer Companies.

k. Defendants, acting in concert, failed to reveal the existence of Webb Lexington Corp., the capital investment of defendants Webb Lexington Corp and Leonard Warner, the "Consulting Agreements" involving

defendant Webb Lexington Corp., and the $300,000 in payments by defendant Warner Manufacturing to defendant Webb Lexington Corp.

52. Plaintiff's reasonably relied on the misrepresentations of the defendants and plaintiffs reasonably relied on the failure of defendants to disclose when defendants had a duty to disclose, all to plaintiffs' detriment and damage.

53. By reason of the foregoing unlawful acts, omissions and misrepresentations, defendants have purposefully and intentionally deceived and defrauded plaintiffs, to the damage and detriment of plaintiffs who are entitled to recover of and from defendants, jointly and severally, damages based upon and resulting from the fraud, misrepresentations and deception perpetrated by defendants as hereinbefore alleged, in the amount of at least $10,000.00, according to proof.

54. The actions of defendants in misleading, defrauding and deceiving plaintiffs, all as hereinbefore alleged, were willful, wanton and intentional, were calculated to damage and harm plaintiffs and were made and taken with utter disregard of the rights and interests of plaintiffs.

55. By reason of the matters and things alleged in this Complaint, plaintiffs are entitled to recover of and from defendants punitive damages in amounts according to proof.

THIRD CLAIM FOR RELIEF
(Conspiracy)

56. Plaintiffs repeat and reallege paragraphs 1 through 55.

57. On information and belief, defendants conspired with each other to defraud plaintiffs as herein alleged, and the defendants conspired to do unlawful acts or to do lawful acts in an unlawful manner. The conduct of the defendants as alleged in this Complaint constitute acts in furtherance of the conspiracy.

58. Defendants are liable to plaintiffs for conspiracy to commit a tort (fraud), for conspiracy to take plaintiffs' prop-

erty by false pretenses in violation of G.S. § 14-100, and for acts in furtherance of the conspiracy for an amount in excess of $10,000.00 for all expenses, losses, and damages plaintiffs have suffered as a result of defendants' acts in furtherance of the conspiracy, and the acts of defendants having been deliberate, intentional, willful, wanton, malicious and wrongful, defendants are liable for punitive damages.

FOURTH CLAIM FOR RELIEF
(Pierce Corporate Veil)

59. Plaintiffs repeat and reallege paragraphs 1 through 58.

60. Plaintiffs are informed and believe and therefore allege that defendants Leonard Warner and Arlene Warner operated defendants Warner Manufacturing and Webb-Lexington Corp. as an instrumentality or alter ego of themselves as sole shareholders, as controlled, family corporations with all family shareholders, all family officers, and all family directors. Defendant Leonard Warner for himself and Arlene Warner, and with defendant Arlene Warner controlling all entities with "hired consultants", exercised such complete domination of the policy and business practices of defendants Warner Manufacturing and Webb Lexington Corp. that defendants Warner Manufacturing and Webb Lexington Corp. had no mind, will or existence of their own separate and apart from the individual defendants.

61. Plaintiff is informed and believes and therefore alleges that defendants Leonard Warner and Arlene Warner inadequately capitalized the controlled corporations, said defendants siphoned corporate funds to themselves and to defendant Stuart Warner and transferred funds from defendant Warner Manufacturing to defendant Webb Lexington Corp., defendants did not maintain adequate corporate and financial records, and the controlled corporations are insolvent.

62. Plaintiff is informed and believes and therefore alleges that defendants Leonard Warner and Arlene Warner controlled both defendant corporations in such a way as to

commit a fraud or wrong, the control and breach of duty proximately caused the injury complained of, and the corporate veil should be disregarded to hold accountable said defendants who engaged in the acts complained of as to do otherwise would result in injustice and be fundamentally unfair.

FIFTH CLAIM FOR RELIEF
(Fraudulent Conveyance)

63. Plaintiffs repeat and reallege paragraphs 1 through 62 herein.

64. Defendant Warner Manufacturing, Inc., at the time of transfer of monies to defendants Webb Lexington Corp., Arlene Warner and Stuart Warner for less than full and fair consideration, did not retain sufficient assets to pay its debts then existing.

65. On or about May 22, 1992 and continuing through the dates that over $300,000 were paid out by defendant Warner Manufacturing, for "consulting fees" and "management fees," the defendants with intent to injure the plaintiffs, conspired together to transfer for less than full and fair value the chief asset of defendant Warner Manufacturing, to wit cash from the sale of the Companies, without either providing for or retaining sufficient assets to pay said debts. In May, 1992 through December 31, 1992, a valid debt existed between defendant Warner Manufacturing and plaintiff Archer Companies as said plaintiff was entitled to a full refund of monies paid.

66. At the time of the transfer of the said cash, all defendants were aware of the existence of valid claims of the plaintiffs and the demands for a refund of all monies paid.

67. All defendants engaged in acts that constitute a badge of fraud in that a) they engaged in a fraudulent conveyance, b) they failed to disclose to plaintiffs or their representatives the existence of the family corporation, being defendant Webb Lexington Corp., and the "consulting arrangements." They transferred all cash out of defendant Warner Manufacturing to a family company and family

members in an attempt to put the cash beyond the reach of plaintiffs.

68. Said conspiracy is in violation of North Carolina General Statutes Section 39-15.

69. Plaintiffs have been damaged in an amount in excess of $10,000.00 because of defendant Warner Manufacturing's fraudulent conveyance and conspiracy to defraud creditors and violation of GS § 39-15, and plaintiffs are also entitled to exemplary damages in an amount in excess of $10,000.00.

SIXTH CLAIM FOR RELIEF
(Unfair or Deceptive Acts and Practices)

70. The allegations of Paragraphs 1 through 69 of this Complaint are repleaded and incorporated herein by reference as if fully set forth.

71. Defendants, individually or acting on behalf of all defendants, unlawfully engaged in unfair and deceptive trade acts and practices affecting commerce in violation of N.C.G.S. §75-1.1: in making the foregoing false, misleading and deceptive representations to plaintiffs Archer Companies and Elliott Archer about the Companies and their business; in purposely furnishing to plaintiffs Archer Companies and Elliott Archer false and misleading purported financial statements and information about the Companies; in intentionally concealing, suppressing and failing to deliver or make known to plaintiffs Archer Companies and Elliott Archer the existence of material and relevant financial information about the Companies concerning its operations and performance prior to November 30, 1991; in intentionally operating the business of the companies in a manner that substantially deviated from historical practices for performance and billing under the Companies' contracts; in inducing plaintiff Archer Companies to pay for certain assets owned by employees of the Companies, which assets Warner Manufacturing did not own and had no right to purport to convey; in causing and inducing plaintiffs Archer Companies and

Elliott Archer to believe that the false, misleading and untrue financial information and financial statements were true and accurate, when defendants knew full well that in truth and in fact said financial information and statements were false, misleading and inaccurate; in intending to mislead and deceive plaintiffs Archer Companies and Elliott Archer about the financial condition and performance of the Companies and the value of the Assets; and in other manners and ways.

72. The conduct of the defendants--including but not limited to the willful and deliberate breach of contract, the conspiracy, the legal fraud and misrepresentation, the taking by false pretenses in violation of G.S. § 14-100, the fraudulent conveyances, and the inequitable assertion of the defendants' power and positions--exhibit bad faith, offend established public policy, were unethical, oppressive and substantially injurious to plaintiffs, constitute intentional wrongdoings and deception and substantial aggravating circumstances, and constitute unfair or deceptive acts and practices in or affecting commerce as are declared unlawful under North Carolina General Statutes Section 75-1.1.

73. Plaintiffs are entities who were and continue to be injured by reason of the acts and things done by the defendants in violation of the NCGS Chapter 75 and are thus entitled to a cause of action for injury done, and pursuant to NCGS Section 75-16, treble damages of the amount fixed by the verdict and pursuant to NCGS Section 75-16.1, reasonable attorney fees.

74. Defendants are liable to plaintiffs for unfair and deceptive acts for all expenses, losses, damages, and injury plaintiffs have suffered because of their acts and to treble damages.

75. Plaintiffs are entitled to attorney fees as a) defendants violated NCGS Chapter 75, b) defendants willfully engaged in the act or practice complained of, c) there was an unwarranted refusal by defendants to fully resolve the matter which constitutes the basis of the Chapter 75 complaint, and

d) plaintiffs suffered actual injury as a result of the Chapter 75 violation.

SEVENTH CLAIM FOR RELIEF
(Constructive Trust)

76. Plaintiffs repeat and reallege paragraphs 1 through 75 herein.

77. Defendants have been unjustly enriched in that they have acquired title to money and other property through fraud, breach of duty, wrongdoings, and circumstances making it inequitable for defendants to retain title to the monies of plaintiff and the capital stock and assets of Full Knit Hosiery Mills, Inc. and other assets acquired by any defendant with plaintiffs' monies.

Plaintiffs are entitled to have a court of equity impose a constructive trust for the benefit of plaintiffs on the monies, capital stock and assets of Full Knit Hosiery Mills, Inc., and all other assets purchased with plaintiffs' monies, all directly or indirectly being the property of plaintiffs.

WHEREFORE, plaintiffs respectfully pray of the Court:

1. That defendants be required to render a full and complete accounting of all funds transferred out of defendant Warner Manufacturing since the date of closing, May 22, 1992.

2. That a constructive trust be impressed upon a) all monies received by any defendant from any plaintiff, directly or indirectly, and b) all properties, stock, or other assets purchased with any such funds, including the assets and stock of Full Knit Hosiery Mills, Inc.

3. That the Court disregard the corporate entity as to defendants Warner Manufacturing and Webb Lexington Corp., as appropriate to avoid injustice, and declare defendants Leonard Warner and Arlene Warner personally liable for the contract and other obligations of defendant Warner Manufacturing.

4. That defendants, jointly and severally, be required to pay plaintiffs a sum in excess of $10,000.00 for compensatory damages.

5. That defendants, jointly and severally, be required to pay plaintiffs a sum in excess of $10,000.00 as punitive damages.

6. That defendants pay plaintiffs treble damages pursuant to NCGS Chapter 75.

7. That defendants pay plaintiffs fair and reasonable attorneys' fees pursuant to NCGS Section 75-16.1.

8. That defendants be required to account to plaintiffs for all moneys and other assets transferred from defendant Webb Lexington Corp. to any defendant since May 22, 1992.

9. That the Court enjoin all defendants from conveying away any additional property without order of the Court.

10. That the Court issue an order pursuant to GS 39-15 setting aside the fraudulent conveyances of the assets of defendant Warner Manufacturing, being all monies received from any plaintiff.

11. That defendants pay interest at the highest rate allowed by law.

12. That defendants pay plaintiff such additional amounts as may be proven at trial, plus interest, additional reasonable attorneys' fees, and other costs in connection with this action.

13. That the Court grant plaintiff such other relief as the Court shall deem just and proper.

PLAINTIFFS DEMAND TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

This the 2nd day of March, 1994.

/s/ Harry G. Gordon
Harry G. Gordon

Attorney for Plaintiffs

/s/ Robert L. Johnston
Robert L. Johnston
Attorney for Plaintiffs

OF COUNSEL:

GORDON & JOHNSTON
Independence Center, Suite 302
400 W. Market Street
Greensboro, NC 27401
Telephone: (919) 275-9910

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
92 CVS 7777

A. E. ARCHER COMPANIES, INC.,
A. ELLIOTT ARCHER and
CAROL A. ARCHER, Plaintiffs,

vs.

WARNER MANUFACTURING, INC.,
LEONARD L. WARNER,
STUART E. WARNER,
ARLENE WARNER, and
WEBB LEXINGTON CORP., Defendants.

SETTLEMENT AGREEMENT

This will confirm the terms of a definitive settlement agreement reached on May 11, 1995, by and among the parties to this litigation.

The total settlement amount to be paid to A. Elliott Archer and Carol A. Archer by Leonard L. Warner or one or more of the other defendants as compensation for emotional distress/personal injury type damages is $300,000.00 less legal and accounting expenses paid on their behalf by Leonard L. Warner or one or more of the other defendants.

Payment shall be made as follows:

1. $200,000.00 in certified or bank check will be paid to A. Elliot Archer and Carol A. Archer by Thursday, 5:00 p.m., May 11, 1995, less any amount paid in legal and accounting fees on their behalf.

2. $100,000.00 promissory note providing for payments of $50,000.00 each, plus accrued interest at nine percent (9.00%), payable the first six months after May 11, 1995, and the second $50,000.00 plus interest payment due one year after May 11, 1995. The promissory note shall be secured by a second lien on a $500,000.00 property owned by one or more of the defendants, and a third lien on the home of defendants Leonard Warner and Arlene Warner. The promissory note and mortgage documents shall be signed by Leonard Warner and Arlene Warner. The parties agree to use N.C. Bar Association Form No. 4, copyright 1976, revised 1985, and N.C. Deed of Trust Form published by the N.C. Bar Association, Form No. 5, copyright 1976, revised September, 1985.

The willingness of A. Elliott Archer and Carol A. Archer to resolve this case for the agreed amount in significant part results from the fact that compensation for emotional distress and personal injury type claims are non-taxable, plus numerous defenses asserted by the defendants to the claims of A.E. Archer Companies, Inc., including claims that the corporation sustained no economic loss. Defendants agree to take no action to cause adverse income taxes to plaintiffs.

All parties agree to cooperate in any reasonable way with plaintiffs in signing release agreements which reflect the nontaxable nature of the compensation, to the extent permitted by tax laws.

Plaintiffs agree to inform the District Attorney that they have been compensated for their loss and they would not oppose any resolution of the pending criminal matter in a fashion satisfactory to the State. The parties expressly agree that this Settlement Agreement does not reflect in any way that plaintiffs have used the criminal process to force a civil settlement.

All parties agree to make no disclosure of the terms of this Settlement Agreement. All parties to the litigation agree to execute releases to any and all claims any party may have or may have had against the other in any way arising out of this litigation, except as to amounts set forth in this Settlement Agreement.

The parties intend by signing this Settlement Agreement to be legally bound to complete the settlement, dismissal of the litigation, and payment of the above amounts, and to finalize and execute all usual and customary additional documents, if any, necessary to effectuate a full and complete settlement of this litigation. To the extent any further negotiation is required, the parties expressly agree to negotiate in good faith and use best efforts to consummate the settlement, and all parties agree not to assert the defense of agreement-to-agree or similar defenses to avoid or attempt to avoid the legal obligation to consummate the settlement of this litigation on the above terms and the dismissal with prejudice of the litigation.

The parties agree that the attached General Release, Mutual Release, and Promissory Note are satisfactory in form. It is contemplated that the $300,000.00 figure will be divided between payment to the individual plaintiffs and legal and accounting fees, with the total being $300,000.00. The parties further agree that this Settlement Agreement shall be null and void if the pending criminal action is not dismissed by the State of North Carolina. In addition, the plaintiffs expressly agree to take no further action to cause criminal action to be re-instituted against any defendant in the future. The $200,000.00 in certified or bank check will be paid in escrow to Harry G. Gordon, to his trust account. The Note and deeds of trust shall be delivered to Harry G. Gordon to be held by him in escrow until the terms and conditions of the settlement have been met. Mr. Gordon expressly agrees not to disburse any amount whatsoever from the escrow account or release the Note or the deeds of trust therefrom to

any person unless and until the criminal action has been dismissed and the terms and conditions of the settlement have been met.

It [sic] witness whereof, the parties hereto, intending to be legally bound, have caused this Settlement Agreement to be executed by their duly authorized representatives on the dates set forth below. This Agreement shall be binding upon the signing parties even if not signed by Stuart E. Warner or his agent.

/s/ A. Elliott Archer
A. Elliott Archer

/s/ Carol A. Archer
Carol A. Archer

A.E. ARCHER COMPANIES, INC.

BY: /s/ A. Elliott Archer
A. Elliott Archer, President

Leonard L. Warner
Arlene Warner
Webb Lexington Corp.

BY: /s/ R. Horace Swiggett, Jr.
R. Horace Swiggett, Jr., Esq.
Attorney acting for all above parties

Stuart E. Warner

BY: /s/ Daniel H. Monroe
(by Horace Swiggett)
Daniel H. Monroe, Esq.
Attorney for Stuart E. Warner

ADDENDUM TO SETTLEMENT AGREEMENT

The parties agree that the attached General Release and Mutual Release are satisfactory in form. It is contemplated that the $300,000.00 figure will be divided between payment to the individual plaintiffs and legal and accounting fees, with the total being $300,000.00. The parties further agree that this Settlement Agreement shall be null and void if the pending criminal action is not dismissed by the State of North Carolina. The $200,000.00 in certified or bank check will be paid in escrow to Harry G. Gordon, to his trust account. The Note and deeds of trust shall be delivered to Harry G. Gordon to be held by him in escrow until the terms and conditions of the settlement have been met. Mr. Gordon expressly agrees not to disburse any amount whatsoever from the escrow account or release the Note or the deeds of trust therefrom to any person unless and until the criminal action has been dismissed with prejudice and the terms and conditions of the settlement have been met.

A. Elliott Archer
Carol A. Archer
A.E. ARCHER COMPANIES, INC.

BY: /s/ Harry G. Gordon May 9, 1995
Harry G. Gordon, Esq.
Attorney for all Plaintiffs

Leonard L. Warner
Arlene Warner
Webb Lexington Corp.

BY: /s/ R. Horace Swiggett, Jr.
R. Horace Swiggett, Jr., Esq.
Attorney acting for all above parties

Stuart E. Warner

BY: /s/ Daniel H. Monroe
(by Horace Swiggett)
Daniel H. Monroe, Esq.
Attorney for Stuart E. Warner

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

GENERAL RELEASE

THIS RELEASE, made and entered into by and between A. Elliott Archer and Carol A. Archer, parties of the first part, and Warner Manufacturing, Inc., Leonard L. Warner, Arlene Warner, Stuart E. Warner and Webb Lexington Corp., parties of the second part;

WITNESSETH

FOR AND IN CONSIDERATION of the sum of $300,000.00, the parties of the first part do hereby release and forever discharge the parties of the second part from any and every right, claim, or demand which the parties of the first part now have or might otherwise hereafter have against the parties of the second part from the beginning of the world to the date of this release arising out of or relating to the matter of the litigation in Guilford County Superior Court, File No. 92-CVS-7777, (the "Lawsuit"), excepting only obligations under a Note and deeds of trust executed contemporaneously herewith.

The payment of the sum of $300,000.00 by one or more defendants as herein described is paid to Carol A. Archer and A. Elliott Archer in settlement of their personal claims for emotional distress/personal-injury-type damages they claim to have suffered for the torts of fraud, intentional misrepresentation, intentional infliction of emotional distress, and negligent infliction of emotional distress. The parties further acknowledge that all sums set forth above constitute payment for claims of damages resulting from personal injuries or sickness or mental and emotional distress in a case involving prosecution of a legal suit or action based upon tort or tort-type rights within the meaning of §104 (A) (2) of the Internal Revenue Code of 1954 as amended.

No party admits any liability or wrongdoing whatsoever in signing this agreement. It is understood and agreed that

the settlement in this matter is the compromise of disputed claims, and that payment is not to be construed as an admission of liability on the part of any party to this agreement, all such liability being expressly denied.

NONDISCLOSURE/CONFIDENTIALITY: The parties, their attorneys and CPA's agree that the settlement terms are confidential and that they will not disclose the amount, terms, or conditions of the settlement to any other person, firm, or corporation, or news media. The parties, their attorneys and CPA's agree that they will limit their comments concerning the settlement of this matter to a statement that the matter has been resolved to the satisfaction of the parties and the terms and conditions of the settlement are confidential and may not be disclosed.

Each party does hereby represent to all other parties that he, she or it is satisfied with the legal services that he, she or it has received in this matter, and that this release has been signed willingly and voluntarily and with full knowledge of all facts and other matters relevant to the Lawsuit.

IN WITNESS WHEREOF, the parties of the first part and the parties of the second part have hereunto set their hands and seals the dates set forth below.

PARTIES OF THE FIRST PART:

/s/ A. Elliott Archer (SEAL) 5/11/95
A. Elliott Archer Date

/s/ Carol A. Archer (SEAL) 5/11/95
Carol A. Archer Date

PARTIES OF THE SECOND PART:

Warner Manufacturing, Inc.

By: /s/ Leonard L. Warner (SEAL) 5/11/95
Date

Webb Lexington Corp.

By: /s/ Leonard L. Warner (SEAL) 5/11/95
Date

/s/ Leonard L. Warner (SEAL) 5/11/95
Leonard L. Warner Date

/s/ Arlene Warner (SEAL) 5/11/95
Arlene Warner Date

/s/ Stuart E. Warner (SEAL) 5/11/95
Stuart E. Warner Date

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

MUTUAL RELEASE

THIS MUTUAL RELEASE, made and entered into by and between A. Elliott Archer and Carol A. Archer, A.E. Archer Companies, Inc., their agents and representatives, all hereinafter Parties of the First Part, and Warner Manufacturing, Inc., Leonard L. Warner, Arlene Warner, Stuart E. Warner and Webb Lexington Corp., their agents and representatives, all hereinafter Parties of the Second Part;

WITNESSETH:

FOR AND IN CONSIDERATION of mutual promises to release each other from any and all claims in any way arising out of or relating to the matter of Guilford County Superior Court litigation entitled A.E. ARCHER COMPANIES INC. A. ELLIOTT ARCHER AND CAROL A. ARCHER v. WARNER MANUFACTURING, INC., LEONARD L. WARNER, STUART E. WARNER, ARLENE WARNER and WEBB LEXINGTON CORP.; File No. 92-CVS-7777, (the "Lawsuit") and other good and valuable consideration, receipt of which is hereby acknowledged, 1) the Parties of the First Part do hereby release and forever discharge the Parties of the Second Part and all other persons and entities whomsoever, from any and every right, claim, or demand which the Parties of the First Part have against the Parties of the Second Part from the beginning of the world to the date of this release, particularly including, but not limited to, all claims, demands and causes of action in the Lawsuit and all claims, demands and causes of action that could have been asserted therein, excepting only obligations under a Promissory Note and Mortgages executed simultaneously or near simultaneously herewith, and 2) the Parties of the Second Part do hereby release and forever discharge the Parties of the First Part and all other persons and entities whomsoever, from any and every right, claim, or demand that the Parties of

the Second Part have against the Parties of the First Part from the beginning of the world to the date of this release, particularly including, but not limited to, all claims, demands and causes of action in the Lawsuit and all claims, demands and causes of action that could have been asserted therein. The Lawsuit and all claims therein will be dismissed with prejudice by the plaintiffs forthwith.

NONDISCLOSURE/CONFIDENTIALITY: The parties, their attorneys and CPA's agree that the settlement terms are confidential and that they will not disclose the amount, terms, or conditions of the settlement to any other person, firm, or corporation, or news media. The parties, their attorneys and CPA's agree that they will limit their comments concerning the settlement of this matter to a statement that the matter has been resolved to the satisfaction of the parties and the terms and conditions of the settlement are confidential and may not be disclosed.

No party admits any liability or wrongdoing whatsoever in signing this agreement. It is understood and agreed that the settlement in this matter is the compromise of disputed claims, and that payment is not to be construed as an admission of liability on the part of any party to this agreement, all such liability being expressly denied.

An additional release document is being executed simultaneously herewith, wherein Carol Archer and A. Elliott Archer release all of their claims. Said additional release shall be considered as cumulative to all of the matters and things set forth herein, and said additional release shall in no way subtract from or in any way diminish this release. The terms of the two releases are contractual in nature and not mere recitals.

Each party does hereby represent to all the other parties that he, she or it is satisfied with the legal services that he, she or it has received in this matter, and that this release has been signed willingly and voluntarily and with full knowledge of all facts and other matters relevant to the Lawsuit.

IN WITNESS WHEREOF, the Parties of the First Part and the Parties of the Second Part have hereunto set their hands and seals the dates set forth below.

PARTIES OF THE FIRST PART:

/s/ A. Elliott Archer (SEAL) 5/11/95
A. Elliott Archer Date

/s/ Carol A. Archer (SEAL) 5/11/95
Carol A. Archer Date

A.E. Archer Companies, Inc.

By: /s/ A. Elliott Archer (SEAL) 5/11/95
President

PARTIES OF THE SECOND PART:

Warner Manufacturing, Inc.

By: /s/ Leonard L. Warner (SEAL) 5/11/95
Date

Webb Lexington Corp.

By: /s/ Leonard L. Warner (SEAL) 5/11/95
Date

/s/ Leonard L. Warner (SEAL) 5/11/95
Leonard L. Warner Date

/s/ Arlene Warner (SEAL) 5/11/95
Arlene Warner Date

/s/ Stuart E. Warner (SEAL) 5/11/95
Stuart E. Warner Date

PROMISSORY NOTE
(Bar Form No.4)

Greensboro, N.C.
$100,000.00
May 11, 1995

FOR VALUE RECEIVED the undersigned, jointly and severally, promise to pay to A. Elliott Archer and Carol A. Archer, or order, the principal sum of ONE HUNDRED THOUSAND AND NO/100 DOLLARS ($100,000.00), with interest from date hereof, at the rate of nine percent (9.0%) per annum on the unpaid balance until paid or until default, both principal and interest payable in lawful money of the United States of America, at the office of Harry G. Gordon, Attorney, 400 W. Market Street, Suite 302, Greensboro, NC 27401, or at such place as the legal holder hereof may designate in writing. It is understood and agreed that additional amounts may be advanced by the holder hereof as provided in the instruments, if any, securing this Note and such advances will be added to the principal of this Note and will accrue interest at the above specified rate of interest from the date of advance until paid. The principal and interest shall be due and payable as follows:

> One (1) payment of $54,500.00, principal and interest, due November 11, 1995, and one (1) payment of $52,250.00, principal and interest, due May 11, 1996.

If not sooner paid, the entire remaining indebtedness shall be due and payable on May 11, 1996.

If payable in installments, each such installment shall, unless otherwise provided, be applied first to payment of interest then accrued and due on the unpaid principal balance, with the remainder applied to the unpaid principal.

Unless otherwise provided, this Note may be prepaid in full or in part at any time without penalty or premium. Par-

tial prepayments shall be applied to installments due in reverse order of their maturity.

In the event of (a) default in payment of any installment of principal or interest hereof as the same becomes due and such default is not cured within ten (10) days from the due date, or (b) default under the terms of any instrument securing this Note and such default is not cured within fifteen (15) days after written notice to maker, then in either such event the holder may without further notice, declare the remainder of the principal sum, together with all interest accrued thereon and, the prepayment premium, if any, at once due and payable. Failure to exercise this option shall not constitute a wavier of the right to exercise the same at any other time. The unpaid principal of this Note and any part thereof, accrued interest and all other sums due under this Note and the Deed of Trust, if any, shall bear interest at the rate of nine percent (9.0%) per annum after default until paid.

All parties to this Note, including maker and any sureties, endorsers, or guarantors hereby waive protest, presentment, notice of dishonor, and notice of acceleration of maturity and agree to continue to remain bound for the payment of principal, interest and all other sums due under this Note and the Deed of Trust notwithstanding any change or changes by way of release, surrender, exchange, modification or substitution of any security for this Note or by way of any extension or extensions of time for the payment of prineipal and interest; and all such parties waive all and every kind of notice of such change or changes and agree that the same may be made without notice or consent of any of them.

Upon default the holder of this Note may employ an attorney to enforce the holder's rights and remedies and the maker, principal, surety, guarantor and endorsers of this Note hereby agree to pay to the holder reasonable attorneys fees not exceeding a sum equal to fifteen percent (15%) of the outstanding balance owing on said Note, plus all other reasonable expenses incurred by the holder in exercising any of

the holder's rights and remedies upon default. The rights and remedies of the holder as provided in this Note and any instrument securing this Note shall be cumulative and may be pursued singly, successively, or together against the property described in the Deed of Trust or any other funds, property or security held by the holder for payment or security, in the sole discretion of the holder. The failure to exercise any such right or remedy shall not be a waiver or release of such rights or remedies or the right to exercise any of them at another time.

This Note is to be governed and construed in accordance with the laws of the State of North Carolina.

This Note is given for monies owed. This Note is secured by a (second) deed of trust on a property owned by Hosiery Industries, Inc. and a (third) deed of trust on property owned by Leonard Warner and Arlene Warner, with Deeds of Trust being executed contemporaneously with the signing of this Promissory Note.

IN TESTIMONY WHEREOF, each corporate maker has caused this instrument to be executed in its corporate name by its _____ President, attested by its Secretary, and its corporate seal to be hereto affixed, all by order of its Board of Directors first duly given, the day and year first above written.

HOSIERY INDUSTRIES, INC.

By: /s/ Leonard L. Warner
_____President

ATTEST: /s/ Arlene Warner
_____Secretary (Corporate Seal)

IN TESTIMONY WHEREOF, each individual maker has hereunto set his hand and adopted as his seal the word

"SEAL" appearing beside his name, the day year first above written.

/s/ Leonard L. Warner (SEAL)
Leonard L. Warner

/s/ Arlene Warner (SEAL)
Arlene Warner

STATE OF NORTH CAROLINA
Guilford County

In the General Court of Justice
Superior Court Division

File No. 93 CRS 20705

STATE VERSUS
Defendant: LEONARD L. WARNER

Offense: Obtaining Property by False Pretenses
G.S. 15A-302(e), -931, -932, -1009

Date of Offense: 3/22/92 - 5/22/92
Offense in Violation of G.S. 14-100

[FILED: May 12, 1995]

DISMISSAL NOTICE OF REINSTATEMENT

( ) DISMISSAL

The undersigned District Attorney enters a dismissal to the above charge(s) and assigns the following reasons:

( ) 1. No crime is charged.

( ) 2. There is insufficient evidence to warrant prosecution for the following reasons:

( ) 3. Defendant has agreed to plead guilty to the following charges:

in exchange for a dismissal of the following charges:

(x) 4. Other: (specify) ISSUES HAVE BEEN RESOLVED TO VICTIM'S SATISFACTION IN CIVIL SUIT.

A jury has not been impaneled nor has evidence been introduced. (If a jury has been impaneled, or if evidence has been introduced, modify this sentence accordingly.)

( ) DISMISSAL WITH LEAVE

The undersigned District Attorney enters a dismissal with leave to the above charge(s) and assigns the following reasons:

( ) 1. The defendant failed to appear for a criminal proceeding at which his attendance was required and the District Attorney believes that the defendant can not readily be found.

( ) 2. The defendant has been indicted and cannot readily be found to be served with an Order For Arrest.

( ) 3. The defendant has entered into a deferred prosecution agreement with the District Attorney in accordance with the provisions of Article 82 of G.S. Chapter 15A.

( ) 4. The defendant has been found by a court to be incapable of proceeding pursuant to Article 56 of G.S. Chapter 15A.

( ) 5. Other: (specify)

NOTE: This form must be completed and signed by the District Attorney when the dismissal occurs out of court. The better practice is for the District Attorney to complete and sign the form when the charges are orally dismissed in open court.

Date: 5-9-95 Signature of District Attorney
/s/ Howard P. Neuman [Illegible]

( ) REINSTATEMENT

( ) 1. This case having previously been dismissed with leave because the defendant failed to appear in court as required, is now reinstated for trial.

( ) 2. The defendant has failed to comply with the deferred prosecution agreement.

Date: Signature of District Attorney

_____

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA
GUILFORD COUNTY
92 CVS 7777

[FILED MAY 15, 1995]

A.E. ARCHER COMPANIES, INC., A. ELLIOTT ARCHER, AND CAROL A. ARCHER, Plaintiffs,

vs.

WARNER MANUFACTURING, INC., LEONARD L. WARNER, STUART E. WARNER, ARLENE WARNER, and WEBB LEXINGTON CORP., Defendants.

PLAINTIFFS' NOTICE OF VOLUNTARY DISMISSAL

Plaintiffs A.E. Archer Companies, Inc., A. Elliott Archer, and Carol A. Archer, by and through their undersigned counsel, hereby gives notice pursuant to Rule 41(a) of the North Carolina Rules of Civil Procedure that they dismisses the above-styled action, with prejudice.

This the 12th day of May, 1995.

/s/ Harry G. Gordon
Harry G. Gordon,
Counsel for Plaintiffs

OF COUNSEL:

GORDON & JOHNSTON
Independence Center, Suite 302
400 W. Market Street
Greensboro, NC 27401
TELEPHONE: (910) 275-9910
FACSIMILE: (910) 275-8797

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA

IN RE: DEBTOR

LEONARD L. WARNER
1004 ROLLINGWOOD DRIVE
GREENSBORO NC 27410-0000
SSN: 075-30-7046
AKA:
DBA:

ARLENE L. WARNER
1004 ROLLINGWOOD DRIVE
GREENSBORO NC 27410-0000
SSN: 449-64-9614
AKA:
DBA:

CASE NO. 96-10373
[RECEIVED: (by Chapter13 Standing Trustee) Mar 9, 1996]

CHAPTER 13 PROOF OF CLAIM

1. This Proof of Claim is made for the claimant named below who states that: (Check appropriate box)

☐ He is the claimant	☐ The claimant is a corporation, and the undersigned is an authorized officer of such corporation	☐ The claimant is a partnership and the undersigned is a member thereof.	☒ The undersigned is the agent or attorney for the claimant

2. Unpaid principal or unpaid amount of judgment. This amount should not contain unmatured interest. Where applicable, interest will be computed by the Trustee's office as provided in the plan. (CLAIMS INCLUDING UNMATURED INTEREST (i.e., GROSS BALANCE) MAY BE DEEMED TO BE FRAUDULENT). (2) $ 104,500.00

3. Additional charges allowable. Itemize: Interest 11/11/95 to 2/5/96 $2,216.22. 15% Attorney Fees to date suit filed (12/4/95; $15,768.91) (3) $ 17,980.13

4. Less any credits. Include insurance and warranty cost rebate. Itemize: (4) $ 0.00

5. Total claim amount. The pay off (net balance) on account as of date petition filed. (5) $ 122,480.13

6. If claimant has judgment state amount of judgment and date

7. Classification and basis of claim: (Check appropriate block)

☐ Unsecured - Attach copy of statement or note.

☒ Secured - Monthly contract payment is _____ and interest rate is _____. Claimant estimates value of collateral to be _____. [ILLEGIBLE]

Attach copy of the security instrument, promissory note and proof of perfection. Holders of real estate mortgages and other long term debt which extends beyond the term of the

plan should attach a statement reflecting the arrearage and other charges due as of the date petition filed.
☐ Other - attach documentation.

SEE ATTACHED DOCUMENTATION

8. The claimant signing below hereby asserts a claim against the debtor in the amount above. The claimant states that there are no set gifts or counterclaims which the debtor may have: that the undersigned is authorized to file this Proof of Claim; and, that this claim does not contain un-matured interest.

9. Disbursements will be mailed to the address below unless a different address is provided in this area.

To receive an acknowledgment of the filing of your claim, file an original and two copies of the claim form enclosing a stamped, self-addressed envelope.

In order to ensure a feasible plan is proposed, creditors are encouraged o file this Proof of Claim prior to the Meeting of Creditors.

ADDRESSEE

GORDON, HARRY G. ESQ.
SUITE 302, 400 W. MARKET STREET
GREENSBORO, NC 77401-0000

FILE ORIGINAL AND ONE COPY OF CLAIM WITH ATTACHMENTS WITH TRUSTEE:

TRUSTEE:

ANITA JO KINLAW TROXLER
201 S--EL- STREET [ILLEGIBLE]
P.O. BOX ----- [ILLEGIBLE]
GREENSBORO NC 27402-1720

Your Account Number: ELLIOT ARCHER
Claim # [ILLEGIBLE]

PENALTY FOR PRESENTING FRAUDULENT CLAIM: FINE UP TO $500,000 OR IMPRISONMENT FOR UP TO 5 YEARS OR BOTH. TITLE 18, U.S.C. §152 & §3623

PRINT NAME Harry G. Gordon
SIGNATURE /s/ Harry G. Gordon
TITLE: Attorney Date: 3/7/96

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA

IN RE:

LEONARD L. WARNER AND
ARLENE L. WARNER,

SS# 075-30-7046

Debtors.

A. ELLIOTT ARCHER AND
CAROL A. ARCHER, Plaintiffs,

vs.

LEONARD L. WARNER AND
ARLENE L. WARNER, Defendants.

Case No. 96-10373
Adversarial Proceeding
Number: 97-2003

[FILED: Jan. 29, 1997]

COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT

1. This is an adversary proceeding to determine dischargeability of a debt pursuant to 11 U.S.C. Section 523(a) of the Bankruptcy Code.

2. On February 5, 1996, defendants filed for protection under Chapter 13 of the United States Bankruptcy Code.

3. On October 29, 1996, defendants' Chapter 13 case was converted to a case under Chapter 7 of the Bankruptcy Code.

4. Plaintiffs are individuals and residents of Indiana.

5. Defendants are individuals and residents of Guilford County, North Carolina.

6. On or about May 11, 1995, the defendants signed a Promissory Note secured by deeds of trust for $100,000.00 to plaintiffs. The loan arrangement permitted the defendants to make one (1) payment of $54,500.00 due November 11, 1995, and one (1) payment of $52,250.00 due May 11, 1996, defendants have made no payments.

7. Defendants agreed on May 11, 1995 to pay plaintiffs the sum of $100,000.00, being the original amount of the Promissory Note, and defendants agreed to pledge property owned by Hosiery Industries, Inc. and property owned by defendants as collateral to secure the Promissory Note and deeds of trust.

8. Prior to and since the filing of bankruptcy, the defendants have failed to pay any of the required payments or to make any arrangement to pay the outstanding indebtedness, and defendants have declined voluntarily to surrender the collateral to plaintiffs.

9. Plaintiffs are the holders of a secured claim against the defendants as evidenced by the Promissory Note and Deeds of Trust signed by defendants. The indebtedness is in the original principal amount of $100,000.00, plus interest at 9.0% from May 11, 1995.

10. The Note provides that defendants "agree to pay to the holder reasonable attorneys fees not exceeding a sum equal to fifteen percent (15%) of the outstanding balance owing on said Note, plus all other reasonable expenses incurred by the holder in exercising any of the holder's rights and remedies upon default." On November 22, 1995 plaintiffs made a five-day demand in accordance with G.S. §6-21.2, but defendants made no payment.

11. On December 4, 1995, plaintiffs filed a suit in Guilford County Superior Court, file #95 Cvs 10310, to collect the outstanding balance of principal and interest plus fifteen percent (15%) attorney fees as allowed by North Carolina law.

12. Plaintiffs had a fully perfected security interest in accordance with the Deeds of Trust on the properties of Hosiery Industries, Inc. and defendants' home at 1004 Rollingwood Drive, Greensboro, North Carolina.

13. Plaintiffs expressly incorporate by reference the terms and conditions of the Amended Complaint plaintiffs filed against defendants in Guilford County Superior Court, case no. 92 Cvs 7777, setting forth causes of action for, among other matters, fraud, misrepresentation, conspiracy to defraud, conspiracy to take plaintiffs' property by false pretenses in violation of criminal statute G.S. §14-100, and, in general, for deliberate, intentional, willful, wanton, malicious, and wrongful acts of defendants in an elaborate scheme by which defendants took hundreds of thousands of dollars from plaintiffs by false pretenses.

14. The $100,000.00 Promissory Note and Deeds of Trust arose out of a settlement of Superior Court action 92 Cvs 7777 in which plaintiffs asserted claims against defendants for fraudulent conduct and conspiracy to take plaintiffs' property by false pretenses in violation of criminal law, G.S. §14-100.

15. Plaintiffs hereby expressly incorporate by reference the terms and conditions of a confidential Settlement Agreement, Mutual Release, and Non-Disclosure/Confidentiality Agreement signed by the plaintiffs and defendants on or about May 11, 1995.

16. In consideration for defendants signing the Promissory Note and Deed of Trust referenced above, plaintiffs consented to the dismissal of an indictment against defendant Leonard L. Warner for obtaining property by false pretenses in violation of criminal statute G.S. §14-100.

17. Attached hereto and hereby expressly incorporated by reference as Exhibit A is a true and correct copy of the dismissal of felony charges against defendant Leonard L. Warner for obtaining property by false pretenses in 93 CrS 22725, with the offense shown as "obtaining property by false pretenses" and the reason for dismissal stated to be "Issues Have Been Resolved to Victims' Satisfaction in Civil Suit."

18. Defendants' debt to plaintiffs should be excepted from discharge and declared nondischargeable under Bankruptcy Code Section 523(a) as defendants obtained money and property by false pretenses, false representations, and actual fraud and through the use of materially false written financial statements with intent to deceive and upon which plaintiffs reasonably relied. As further reason to except the debt from discharge, defendants' conduct was in gross violation of criminal law, G.S. §14-100, which declares it a felony to take property by false pretenses, and the state of North Carolina dismissed felony charges based on express representations that defendants would compensate plaintiffs for losses plaintiffs sustained by virtue of the taking by false pretenses.

WHEREFORE, the plaintiffs pray:

1. That the debt owed to plaintiffs by defendants be determined to be excepted from discharge under 11 U.S.C. Section 523(a);

2. That plaintiffs have and recover of defendants the principal sum of $100,000.00 plus interest at the rate of 9.0% per annum from May 5, 1996.

3. That plaintiffs have and recover of defendants reasonable attorneys' fees of 15% of the outstanding balance, to which they are lawfully entitled by North Carolina General Statutes §6-21.2.

4. That plaintiffs have and recover of defendants the costs of this action to be taxed by the Clerk.

5. That plaintiffs have and recover of and from defendants such other and further relief as to the Court may seem just and proper.

This the 29th day of January, 1997.

/s/ Harry G. Gordon
Harry G. Gordon,
Attorney for Plaintiffs
State Bar No. 5628

OF COUNSEL:

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Independence Center, Suite 302
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Telephone: (910) 275-9910

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA

IN RE:
LEONARD L. WARNER and
ARLENE L. WARNER,
Debtors.

A. ELLIOT ARCHER and
CAROL A. ARCHER, Plaintiffs,

vs.

LEONARD L. WARNER and
ARLENE L. WARNER, Defendants.

Case No. 96-10373
ADVERSARIAL PROCEEDING
Number: 97-2003

[FILED Oct. 6, 1997]

DEBTOR'S ANSWER TO COMPLAINT TO DETERMINE DISCHARGEABILITY

Now comes the female Debtor, Arlene L. Warner, through her undersigned counsel, and responds to the Complaint to Determine Dischargeability of Debt in the above captioned Adversary Proceeding and responds to Complaint as follows:

FIRST DEFENSE

As a first defense the Female Debtor responds to the numbered paragraphs of the Complaint as follows:

1. The allegations contained in Paragraph 1 of the Complaint are admitted.

2. The allegations contained in Paragraph 2 of the Complaint are admitted.

3. The allegations contained in paragraph 3 of the Complaint are admitted.

4. The Female Debtor does not have sufficient information so as to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint and such allegations are therefore denied.

5. The allegations contained in Paragraph 5 of the Complaint are admitted.

6. The allegations contained in Paragraph 6 of the Complaint are admitted.

7. The allegations contained in Paragraph 7 of the Complaint are admitted.

8. The allegations contained in paragraph 8 of the Complaint are admitted.

9. The Female Debtor admits that the principal amount of the Note was $100,000.00. The remaining allegations of Paragraph 9 call for a legal conclusion as to the secured status of the Plaintiff's claim against the Debtors and is therefore denied.

10. The Note speaks for itself and is the best evidence of its terms. The Female Debtor does not have sufficient information so as to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint and such allegations are hereby denied.

11. The allegations contained in Paragraph 11 of the Complaint are admitted.

12. The Female Debtor does not have sufficient information so as to form a belief as to the truth of the allegations contained in Paragraph 12 of the Complaint and such allegations are therefore denied. Furthermore, Paragraph 12 of the Complaint calls for a legal conclusion and therefore does not require a response.

13. To the extent that the allegations contained in Paragraph 13 require a response such allegations are denied. The Plaintiff's Complaint in 92 CVS 7777 speaks for itself and is the best evidence on its own terms. A copy of such complaint is not attached to the Plaintiff's Complaint in this action.

14. The Female Debtor admits that the $100,000.00 Promissory Note and Deed of Trust arose out of the settlement of the civil action captioned 92 CVS 7777. The Female Debtor denies that such settlement constituted an admission of liability on her part as to any of the allegations contained in the Complaint in 92 CVS 7777.

15. To the extent that the allegations contained in Paragraph 15 require a response, such allegations are denied. The documents incorporated by reference speak for themselves and are the best evidence of their terms.

16. The Female Debtor does not have information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Complaint. The Female Debtor notes that she was not indicted for obtaining property by false pretenses.

17. The documents attached to the Complaint speak for themselves and are the best evidence of their terms. To the extent that the allegations contained in Paragraph 17 require a response, such allegations are denied.

18. The allegations contained in Paragraph 18 of the Complaint are denied. The Female Defendant affirmatively pleads that she has at no time been indicted for any violation of the North Carolina Criminal Code.

SECOND DEFENSE

As a further defense and as an affirmative defense, the Female Debtor Pleads that the $100,000.00 debt to the Plaintiffs arising **form** the settlement of Guilford County Civil Action 92 CVS 777 which is in issue in this Adversary Proceeding did not arise from any fraud, false representations, use of materially false statements in writing or actual fraud in

any manner so as to be a non-dischargeable debt under 11 U.S.C. Section 523(a)(2).

THIRD DEFENSE

As a further defense and as an affirmative defense, the Female Debtor pleads that she has at no time admitted liability as to any of the claims in the Complaint in Guilford County Civil Action, 92 CVS 777 and that judgment was not entered against her in that action. The settlement of Guilford County Civil Action 92 CVS 7777 was a settlement of disputed claims and did not constitute an admission of liability. The Female Debtor denies that she was, or is, in any way liable to the Plaintiffs for any fraud or obtaining of property through false pretenses.

WHEREFORE, the Female Debtor respectfully requests that the Court:

1. Determine the Female Debtor's liability to the Plaintiffs to be dischargeable;

2. Deny the Plaintiff's prayer for relief and dismiss this Adversary Proceeding with prejudice;

3. Tax the Plaintiff with the costs of this action; and

4. Grant such other and further relief as in necessary in the interests of justice.

This is the 6th day of October, 1997.

/s/ Frank J. Chut, Jr.
Frank J. Chut, Jr.
State Bar No. 17696

OF COUNSEL:
Chut & Chut, PA
Attorneys for Arlene Warner
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Greensboro, NC 27420
(910) 273-9668

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA

IN RE:

LEONARD L. WARNER AND
ARLENE L. WARNER,

SS# 075-30-7046

Debtors.

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vs.

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Case No. 96-10373
Adversarial Proceeding
Number: 97-2003

MOTION TO AMEND
COMPLAINT TO DETER
DISCHARGEABILITY OF DEBT

NOW COMES plaintiffs, through counsel, and, prior to the completion of discovery in this case, move the Court to amend plaintiffs' Complaint to Determine Dischargeability of Debt as follows:

To add a Second Claim for Relief and substitute the Prayer for Relief all as set forth in the attached (Proposed) Amendment to Complaint to Determine Dischargeability of Debt.

The primary purposes of this amendment are to 1) add facts revealed through discovery and a related Adversarial Proceeding wherein the Trustee has alleged a corporation owned by defendant Arlene Warner made a substantial fraudulent conveyance to defendants' state court attorneys; 2) add facts revealed by examination of corporate records and other documents abandoned by defendants in the attic of their former home; 3) set forth facts showing defendants committed fraud and fraud by omission when defendants induced plaintiffs to accept a $100,000.00 Promissory Note; and 4) more clearly set forth the acts of defendant Arlene L. Warner that subject her to liability to plaintiffs and reveal why her debt to plaintiffs should be nondischargeable.

WHEREFORE, the plaintiffs pray that their Complaint to Determine Dischargeability of Debt be amended as set forth above.

This the 25th day of June, 1998.

/s/ Harry G. Gordon
Harry G. Gordon,
Attorney for Plaintiffs
State Bar No. 5628

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UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA

IN RE:
LEONARD L. WARNER AND
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SS# 075-30-7046
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Number: 97-2003

(PROPOSED)
AMENDMENT TO COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT

SECOND CLAIM FOR RELIEF

19. Plaintiff repeats and realleges paragraph 1 through 18 of the Complaint.

20. The essential claim. asserted in the state court action, A.E. Archer Companies, Inc. A. Elliott Archer and Carol A. Archer vs. Warner Manufacturing, Inc., Leonard L. Warner, Stuart E. Warner, Arlene Warner and Webb Lexington Corp., 92 CvS 7777 (Superior Court; Guilford County), was that the defendants, conspiring together, purchased a distressed business in December of 1991 for $250,000.00, significantly altered the financial records of the former business to restate the prior owner's earning from (-) $129,951.69 to

(+) $38,376.00, offered the business for sale with "recast" financials for $1.24 million about two (2) months after the purchase, and then in May of 1992, about six (6) months of making the purchase for $250,000.00, resold the business for $685,000.00 to a company formed by plaintiff A. Elliott Archer. Plaintiffs personally guaranteed a $500,000.00 bank loan to make the purchase, and plaintiffs were seriously damaged financially, mentally and emotionally by the actions of defendants.

21. Defendant Leonard Warner was indicted by the State of North Carolina for felony obtaining property by false pretenses in connection with the purchase and resale of the business in question.

22. On information and belief, although Arlene Warner was never indicted, records produced in discovery and the sworn testimony of the Warners established as fact that Arlene Warner was a director and officer and owned fifty (50%) of Warner Manufacturing, Inc., the very corporation that purchased the distressed business for $250,000.00, "recast" the financials, offered it for $1.24 million, and resold it to Archer Companies six months later for $685,000.00.

23. On information and belief, although Arlene Warner was never indicted, records produced in discovery and the sworn testimony of the parties established as fact that Arlene Warner was a director and Vice-President and Secretary and owned one hundred (100%) percent of the stock of Webb Lexington Corp., the corporation that received from Warner Manufacturing, Inc. two checks totaling $282,750.00 one day after the sale of the business to Archer Companies.

24. On information and belief, Arlene Warner is a college graduate, has taken a college course in accounting, and is the President and was in 1992 the sole owner of her own incorporated business, being Arlene Warner Designs, Inc.

25. On information and belief, defendant Arlene Warner was the sole shareholder, a director, and for a number of years the President of Alarmmaster, Inc. a company operated

by defendant Leonard Warner from approximately 1970 to 1988, and defendant Arlene Warner received all or virtually all of the proceeds of sale, in excess of $150,000.00, when that business was sold in 1988.

26. On information and belief, defendant Arlene Warner was a fifty percent (50%) shareholder, a director, and an officer of Central Communications, Inc., a company operated by defendant Leonard Warner from approximately 1977 to 1988, and defendant Arlene Warner received fifty percent (50%) of the proceeds of sale when that business was sold in 1988.

27. On information and belief, on December 10, 1991, Arlene Warner as corporate secretary of Warner Manufacturing, Inc. signed closing documents in connection with the purchase of the business in question for $250,000.00, which business was two (2) months later offered for sale for $1.24 million and in May of 1992 sold to Archer Companies for $685,000.00.

28. On information and belief, on or about December 10, 1991, Arlene Warner as corporate secretary of Warner Manufacturing, Inc. signed on behalf of Warner Manufacturing, Inc. a $100,000.00 Promissory Note bearing 9% interest and a closing statement, both reflecting a $200,000.00 debt by Warner Manufacturing, Inc. to the seller of the business in question, which debt was subsequently omitted from the balance sheets and income statements of Warner Manufacturing, Inc. when the financial statements were provided to plaintiffs.

29. On information and belief, Arlene Warner was in 1992 the Vice-President, Treasurer, and Secretary of Webb Lexington Corp., and she was the 100% shareholder of Webb Lexington Corp. and one of the two directors, together with Leonard Warner, her husband.

30. On information and belief, Webb Lexington Corp. was in 1992 a corporation owned 100% by defendant Arlene Warner with no employees and no discernable business pur-

pose for existing separate and apart from transferring monies among the Warners and their companies.

31. On information and belief, documents produced in discovery by Webb Lexington Corp. (owned 100% by Arlene Warner) and Warner Manufacturing, Inc. (owned 50% by Arlene Warner) included checks showing hundreds of thousands of dollars paid to Arlene Warner's corporation, Webb Lexington Corp., by Warner Manufacturing, Inc. for labor costs of Warner Manufacturing, Inc., all disguised as consulting fees and management fees paid by Warner Manufacturing, Inc. to Webb Lexington Corp.

32. On information and belief, defendant Arlene Warner's corporation, Webb Lexington Corp., received from Warner Manufacturing on May 23, 1992, one day after the closing with plaintiffs, check #1109 for $102,750.00 and check #1110 for $180,000.00. Defendant Arlene Warner also received in some fashion a $390,000.00 loan from Webb Lexington Corp. as evidenced by a September 16, 1992 check from Webb Lexington Corp. to High Point Bank and Trust Company bearing the notation "loan AW."

33. On information and belief, promptly after the closing at which time Archer Companies paid $685,000.00 for the business purchased six months earlier for $250,000.00 was the $390,000.00 transfer of funds from Webb Lexington Corp. related to the acquisition by Arlene Warner of Full Knit Hosiery Mills. Defendant Arlene Warner became the sole owner of the Full Knit Hosiery Mills.

34. On information and belief, Webb Lexington Corp., Arlene Warner and son Stuart Warner were the primary beneficiaries of the conduct by Leonard Warner that resulted in defendant Leonard Warner being indicted for felony obtaining property by false pretenses.

35. Suit in state court was initially filed against only defendant Leonard Warner and the Warners' corporation. After discovery revealed the involvement of defendant Arlene Warner and the additional corporations owned by defendant

Arlene Warner, plaintiffs filed an Amended Complaint against both defendants, their corporation, and Webb Lexington Corporation, a corporation owned 100% by defendant Arlene Warner, and in which she was Director, Vice President, and Corporate Secretary. The suit in state court and felony criminal proceedings commenced in state court against defendant Leonard Warner was settled on the eve of trial based on restitution/settlement amount of $300,000.00, being $200,000.00 cash and $100,000.00 over time. To induce plaintiffs to finance the $100,000.00 of the $300,000.00 restitution/settlement, defendants provided a Deed of Trust on their home and also on real property owned by Hosiery Industries, Inc., another corporation owned by defendants.

36. In consideration for defendants agreeing to make restitution to plaintiffs in the total amount of $300,000.00, including signing the Promissory Note and Deed of Trust referenced above, plaintiffs consented to the dismissal of an indictment against defendant Leonard L. Warner for obtaining property by false pretenses in violation of criminal statute G.S. §14-100, plaintiffs agreed that plaintiff would take no action to cause criminal proceedings to be brought against defendant Arlene Warner or any defendant; and plaintiffs agreed not to pursue further plaintiffs' claims for fraud, misrepresentation and the like.

37. The "Settlement Agreement" signed by plaintiffs and defendants on or about the same date they signed the $100,000.00 Promissory Note contains the following language about criminal actions:

> The parties further agree that this Settlement Agreement shall be null and void if the pending criminal action is not dismissed by the State of North Carolina..... Mr. Gordon expressly agrees not to disburse any amount whatsoever from the escrow account or release the Note or Deeds of Trust therefrom to any person unless and until the criminal action has been dismissed with prejudice

and the terms and conditions of the settlement have been met.

38. The "General Release" signed by plaintiffs and defendants on or about the same date they signed the $100,000.00 Promissory Note expressly recites that plaintiffs had claims "for emotional distress/personal-injury-type damages they claimed to have suffered for the torts of fraud, intentional misrepresentation, intentional infliction of emotional distress...." The parties then acknowledged that all sums paid and to be paid "constitute payment for claims of damages resulting from personal injuries or sickness or mental and emotional distress in a case involving prosecution of a legal suit or action based upon tort or tort type rights...."

39. Defendants failed to reveal to Plaintiff that, prior to signing the $100,000.00 Promissory Note and Deed of Trust, defendants caused a Deed of Trust to be executed in favor of defendants' state court counsel to guaranty payment of defendants' attorneys.

40. When defendants later filed bankruptcy, plaintiffs learned defendants had, unbeknownst to them, placed a substantial lien in favor of their (state court) counsel on the real property of Webb Lexington Corporation, and there was very little equity in the real property owned by Hosiery Industries, Inc.

41. On March 20, 1998, Charles M. Ivey, III, Trustee of the estate of Webb Lexington Corporation, filed a suit against Tuggle, Duggins & Meschan, P.A., former state court counsel for defendants. See Adversary Proceeding No. 98-2020 in Case No. B-96-10356C-7G, United States Bankruptcy Court for the Middle District of North Carolina.

42. The pleadings of the Trustee in Adversary Proceeding No. 98-2020 allege that a) defendant Leonard Warner and defendant Arlene Warner's wholly-owned corporation, Webb-Lexington, Inc., signed a $100,000.00 "future advances" Note to the defendants' state court attorneys prior to the date defendants induced plaintiffs to agree to finance

$100,000.00 of the $300,000.00 restitution/settlement amount; b) the Future Advances Note was secured by a first lien on real property of Webb Lexington Corporation; c) only $18,377.54 was owed when the $100,000.00 future advance Note was signed; d) $40,000.00 was paid to defendants' state court counsel on the secured future advances Note on or about February 22, 1996, after defendants signed the Note to plaintiff and after defendants filed for protection under the Bankruptcy Act; e) the Deed of Trust was provided by Webb Lexington Corporation for no value or consideration and is void and invalid; f) the Deed of Trust by Webb Lexington Corporation was made with actual intent on the part of the corporation to defraud creditors and was made at a time when Webb Lexington Corporation did not retain sufficient property to pay its remaining creditors, and the execution and delivery of the Deed of Trust to defendants' state court attorney and payments thereon constituted fraudulent conveyances under N.C.G.S. §39-15.

43. The pleadings of defendant Tuggle, Duggins & Meschan, PA in Adversary Proceeding No. 98-2020 allege that, based on information available to defendant Arlene Warner's own state court counsel, the doctrine of alter ego applies, and "Webb Lexington Corporation was a mere instrumentality of Leonard Warner, was under capitalized, and failed to follow corporate formalities." On information and belief, defendant Arlene Warner, not defendant Leonard Warner, was the one hundred percent (100%) owner of Webb Lexington Corporation as well as an officer and director with defendant Leonard Warner and the doctrine of alter ego also applies to defendant Arlene Warner.

44. On information and belief, at or about the same time defendants represented to plaintiffs they could only borrow or otherwise come up with $200,000.00 of the agreed $300,000.00 restitution/settlement amount to be paid, one or both defendants in fact borrowed approximately $50,000.00 on the eve of signing the $100,000.00 Promissory Note to plaintiffs, which $50,000.00 was used to pay monies owed to

defendants' state court counsel, and this $50,000.00 loan was not disclosed to plaintiffs and seriously impacted defendants ability to pay the $100,000.00 Note to plaintiffs.

45. Defendants were counseled in the state court litigation by experienced bankruptcy counsel who did not reveal to plaintiffs the $50,000.00 loan to pay defendants' counsel or the lien defendants' counsel put in place for itself; on information and belief, defendants induced plaintiffs to finance the $100,000.00 amount with no intent to honor the obligation at the time the Note was signed by defendants.

46. Plaintiffs would not have agreed to accept a $100,000.00 Promissory Note from defendants had plaintiffs known about the $50,000.00 loan to pay defendants' counsel or the substantial lien defendants caused to be placed on the real estate of Webb Lexington Corporation, Inc., a corporation owned 100% by defendant Arlene Warner and a substantial asset of defendant Arlene Warner who was personally obligated on the Note.

47. Plaintiffs would not have agreed to accept a $100,000.00 Promissory Note from defendants had plaintiffs known about the substantial lien defendants caused to be placed on the real estate of Webb Lexington Corporation, Inc., which effectively gave defendants' state court counsel a superior lien position to plaintiffs on the "assets of defendant Arlene Warner."

48. On information and belief, defendants induced plaintiffs to extend credit and accept a $100,000.00 Promissory Note/loan arrangement with no present intention to pay the same, and defendants in fact filed bankruptcy without ever paying any part of principal or interest on the Note, and promptly after filing bankruptcy defendants used available assets to pay $40,000.00 to the very attorneys who crafted in significant part the financed portion of the restitution/settlement arrangement.

49. Defendants engaged in actual fraud, fraud by omission, false pretenses, false representation, obtaining property

(money) by false pretenses, larceny by trick and deceit; and ultimately fraudulently induced plaintiffs to accept a $100,000.00 Promissory Note as part of a settlement/restitution arrangement for criminal and civil fraud claims; and defendants willfully and maliciously caused plaintiffs great financial loss and severe mental and emotional distress and suffering.

50. Plaintiffs agreed to the Promissory Note arrangement believing it to be a restitution arrangement for losses they sustained by virtue of the fraud and criminal conduct of defendants. The documents signed as part of the settlement/ restitution arrangement clearly reflect the criminal and civil fraud clauses, and plaintiffs understood the release to be effective if and only if defendants made complete payment and restitution as per the agreed terms.

51. Defendants are not entitled to a discharge as to their debt to the plaintiffs as the United States Bankruptcy Code, Title II, §523(a) provides that a discharge under Chapter 7 does not discharge an individual from any debt:

> (2) for money, property, services, or an extension, renewal or refinancing of credit; to the extent obtained by (a) false pretenses, a false representation, or actual fraud,
>
> (4) for fraud or defalcation while acting in fiduciary capacity, embezzlement; or larceny,
>
> (6) for willful and malicious injury by the debtor to another entity …

52. The actions of defendants, including but not limited to inducing plaintiffs to accept the Promissory Note, constitute false representation or concealment by defendants of a material fact; made with knowledge of its falsity or in culpable ignorance of its truth, made with the intent that it should be acted upon by plaintiffs, and plaintiffs justifiably and reasonably relied and acted upon the misrepresentation, resulting in injury to plaintiffs in that plaintiffs suffered substantial losses in 1992 and additional losses when the $100,000.00

Promissory Note proved uncollectible in large part due to the loans to pay and the undisclosed substantial secured debt in favor of defendants' state court attorneys.

53. On information and belief, defendants caused and permitted Webb Lexington Corporation, defendant Arlene Warner's wholly-owned corporation, to engage in a fraudulent conveyance.

54. On information and belief, defendants Arlene Warner and Leonard Warner conspired with each other to deceive plaintiffs and induce plaintiffs to purchase a business from defendants, defendants conspired to do the acts alleged in this pleading, and defendants conspired to do unlawful acts or to do lawful acts in an unlawful manner. The conduct of defendants as alleged in this Complaint constitute acts in furtherance of the conspiracy.

55. As conspirators, the acts of each conspirator, defendant Leonard Warner and defendant Arlene Warner, becomes the acts of each co-conspirator.

56. Defendants are liable to plaintiffs for conspiracy to commit torts (fraud) and criminal acts and for acts in furtherance of the conspiracy for an amount in excess of $10,000.00 for all expenses, losses, and damages plaintiffs has suffered as a result of defendants' acts in furtherance of the conspiracy, and defendants are liable for punitive damages.

57. On information and belief, defendants Arlene Warner and Leonard Warner operated Webb Lexington Corporation, Warner Manufacturing, Inc., and Full Knit Hosiery Mills, Inc. as an instrumentality or alter ego of themselves as sole shareholders, with defendants Arlene Warner and Leonard Warner exercising such complete domination of the policy and business practices of the corporations that the corporations had no mind, will or existence of their own separate and apart from defendants Arlene Warner and Leonard Warner.

58. On information and belief, defendants inadequately capitalized the controlled corporations, defendants siphoned

corporate funds to themselves, defendants did not maintain adequate corporate records, and the controlled corporations were at all relevant times insolvent.

59. On information and belief, the individual defendants controlled the corporations in such a way as to commit a fraud or wrong, the control and breach of duty proximately caused the injury complained of, and the corporate veils should be disregarded to hold accountable the individual defendants who engaged in the acts complained of as to do otherwise would result in injustice and be fundamentally unfair.

WHEREFORE, the plaintiffs pray:

1. That defendants be required to give a full and complete accounting of all transfers of property, borrowings, future advances, and use of funds at or about the time defendants signed the settlement/restitution agreements with plaintiffs;

2. That the debt owed to plaintiffs by defendants be determined to be excepted from discharge under 11 U.S.C. Section 523(a);

3. That plaintiffs have and recover of defendants reasonable attorneys' fees.

4. That plaintiffs have and recover of defendants the costs of this action to be taxed by the Clerk.

5. That in the alternative, if defendant Arlene Warner's obligation to plaintiffs is determined to be discharged in Bankruptcy, that plaintiffs be declared released from any agreement and obligation try take no action to cause criminal proceedings to be brought against Arlene Warner or her son, Stuart Warner.

6. That plaintiffs have and recover of and from defendants such other and further relief as to the Court may seem just and proper.

This the 25th day of June, 1998.

/s/ Harry G. Gordon
Harry G. Gordon,
Attorney for Plaintiffs
State Bar No. 5628

OF COUNSEL:
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UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

IN RE:
Leonard L. Warner and
Arlene L. Warner, Debtors.

A. Elliott Archer and
Carol A. Archer, Plaintiffs,
v.
Leonard L. Warner and
Arlene L. Warner, Defendants.

Case No. 96-10373C-7G
Adversary No. 97-2003

ORDER

This adversary proceeding came before the court on September 15, 1998, for hearing upon a motion by plaintiffs to file amended complaint, a motion by plaintiffs to compel discovery and a motion by defendant Arlene L. Warner for summary judgment. When this adversary proceeding was called for hearing, no attorneys or parties were present in court to prosecute the motions which were scheduled for hearing. The motions, therefore, were denied in open court. Pursuant to such ruling, the motion by plaintiffs to file amended complaint is denied, the motion by plaintiffs to compel discovery is denied and the motion by defendant Arlene L. Warner for summary judgment is denied.

This 5th day of October, 1998.

/s/ William L. Stocks [STAMP]
WILLIAM L. STOCKS
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA

IN RE:
LEONARD L. WARNER AND
ARLENE L. WARNER,
SS# 075-30-7046
Debtors.

A. ELLIOTT ARCHER AND
CAROL A. ARCHER, Plaintiffs,

vs.

LEONARD L. WARNER AND
ARLENE L. WARNER, Defendants.

Case No. 96-10373
Adversarial Proceeding
Number: 97-2003

RENEWED MOTION TO AMEND COMPLAINT
TO DETERMINE DISCHARGEABILITY OF DEBT

NOW COMES plaintiffs, through counsel, for good cause and for the reasons set forth in the accompanying Objection to "Second" Motion for Summary Judgment by Defendant Arlene L. Warner, hereby renew plaintiffs' Motion to Amend Complaint to Determine Dischargeability of Debt.

Plaintiffs, through counsel, renews its Motion made prior to the completion of discovery in this case to amend plaintiffs' Complaint to Determine Dischargeability of Debt as follows:

To add a Second Claim for Relief and substitute the Prayer for Relief all as set forth in the attached

(Proposed) Amendment to Complaint to Determine Dischargeability of Debt.

The primary purposes of this amendment are to 1) add facts revealed through discovery and a related Adversarial Proceeding wherein the Trustee has alleged a corporation owned by defendant Arlene Warner made a substantial fraudulent conveyance to defendants' state court attorneys; 2) add facts revealed by examination of corporate records and other documents abandoned by defendants in the attic of their former home; 3) set forth facts showing defendants committed fraud and fraud by omission when defendants induced plaintiffs to accept a $ 100,000.00 Promissory Note; and 4) more clearly set forth the acts of defendant Arlene L. Warner that subject her to liability to plaintiffs and reveal why her debt to plaintiffs should be nondisch. rgeable.

WHEREFORE, the plaintiffs pray that their Complaint to Determine Dischargeability of Debt be amended as set forth above.

This the 27th day of May, 1999.

/s/ Harry G. Gordon
Harry G. Gordon,
Attorney for
A. Elliott Archer and
Carol A. Archer

OF COUNSEL:

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UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA

IN RE:
LEONARD L. WARNER AND
ARLENE L. WARNER,

SS# 075-30-7046

Debtors.

A. ELLIOTT ARCHER AND
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LEONARD L. WARNER AND
ARLENE L. WARNER, Defendants.

Case No. 96-10373
Adversarial Proceeding
Number: 97-2003

[FILED: May 27, 1999]

(PROPOSED)
AMENDMENT TO COMPLAINT TO
DETERMINE DISCHARGEABILITY OF DEBT

SECOND CLAIM FOR RELIEF

19. Plaintiff repeats and realleges paragraph 1 through 18 of the Complaint.

20. The essential claim asserted in the state court action, A.E. Archer Companies, Inc. A. Elliott Archer and Carol A. Archer vs. Warner Manufacturing, Inc., Leonard L. Warner, Stuart E. Warner, Arlene Warner and Webb Lexington Corp.,

92 CvS 7777 (Superior Court, Guilford County), was that the defendants, conspiring together, purchased a distressed business in December of 1991 for $250,000.00, significantly altered the financial records of the former business to restate the prior owner's earning from (-) $129,951.69 to (+) $38,376.00, offered the business for sale with "recast" financials for $1.24 million about two (2) months after the purchase, and then in May of 1992, about six (6) months of making the purchase for $250,000.00, resold the business for $685,000.00 to a company formed by plaintiff A. Elliott Archer. Plaintiffs personally guaranteed a $500,000.00 bank loan to make the purchase, and plaintiffs were seriously damaged financially, mentally and emotionally by the actions of defendants.

21. Defendant Leonard Warner was indicted by the State of North Carolina for felony obtaining property by false pretenses in connection with the purchase and resale of the business in question.

22. On information and belief, although Arlene Warner was never indicted, records produced in discovery and the sworn testimony of the Warners established as fact that Arlene Warner was a director and officer and owned fifty (50%) of Warner Manufacturing, Inc., the very corporation that purchased the distressed business for $250,000.00, "recast" the financials, offered it for $1.24 million, and resold it to Archer Companies six months later for $685,000.00.

23. On information and belief, although Arlene Warner was never indicted, records produced in discovery and the sworn testimony of the parties established as fact that Arlene Warner was a director and Vice-President and Secretary and owned one hundred (100%) percent of the stock of Webb Lexington Corp., the corporation that received from Warner Manufacturing, Inc. two checks totaling $282,750.00 one day after the sale of the business to Archer Companies.

24. On information and belief, Arlene Warner is a college graduate, has taken a college course in accounting, and

is the President and was in 1992 the sole owner of her own incorporated business, being Arlene Warner Designs, Inc.

25. On information and belief, defendant Arlene Warner was the sole shareholder, a director, and for a number of years the President of Alarmmaster, Inc. a company operated by defendant Leonard Warner from approximately 1970 to 1988, and defendant Arlene Warner received all or virtually all of the proceeds of sale, in excess of $150,000.00, when that business was sold in 1988.

26. On information and belief, defendant Arlene Warner was a fifty percent (50%) shareholder, a director, and an officer of Central Communications, Inc., a company operated by defendant Leonard Warner from approximately 1977 to 1988, and defendant Arlene Warner received fifty percent (50%) of the proceeds of sale when that business was sold in 1988.

27. On information and belief, on December 10, 1991, Arlene Warner as corporate secretary of Warner Manufacturing, Inc. signed closing documents in connection with the purchase of the business in question for $250,000.00, which business was two (2) months later offered for sale for $1.24 million and in May of 1992 sold to Archer Companies for $685,000.00.

28. On information and belief, on or about December 10, 1991, Arlene Warner as corporate secretary of Warner Manufacturing, Inc. signed on behalf of Warner Manufacturing, Inc. a $100,000.00 Promissory Note bearing 9% interest and a closing statement, both reflecting a $100,000.00 debt by Warner Manufacturing, Inc. to the seller of the business in question, which debt was subsequently omitted from the balance sheets and income statements of Warner Manufacturing, Inc. when the financial statements were provided to plaintiffs.

29. On information and belief, Arlene Warner was in 1992 the Vice-President, Treasurer, and Secretary of Webb Lexington Corp., and she was the 100% shareholder of Webb

Lexington Corp. and one of the two directors, together with Leonard Warner, her husband.

30. On information and belief, Webb Lexington Corp. was in 1992 a corporation owned 100% by defendant Arlene Warner with no employees and no discernable business purpose for existing separate and apart from transferring monies among the Warners and their companies.

31. On information and belief, documents produced in discovery by Webb Lexington Corp, (owned 100% by Arlene Warner) and Warner Manufacturing, Inc. (owned 50% by Arlene Warner) included checks showing hundreds of thousands of dollars paid to Arlene Warner's corporation, Webb Lexington Corp., by Warner Manufacturing, Inc. for labor costs of Warner Manufacturing, Inc., all disguised as consulting fees and management fees paid by Warner Manufacturing, Inc. to Webb Lexington Corp.

32. On information and belief, defendant Arlene Warner's corporation, Webb Lexington Corp., received from Warner Manufacturing on May 23, 1992, one day after the closing with plaintiffs, check #1109 for $102,750.00 and check #1110 for $180,000.00. Defendant Arlene Warner also received in some fashion a $390,000.00 loan from Webb Lexington Corp. as evidenced by a September 16, 1992 check from Webb Lexington Corp. to High Point Bank and Trust Company bearing the notation "loan AW."

33. On information and belief, promptly after the closing at which time Archer Companies paid $685,000.00 for the business purchased six months earlier for $250,000.00 was the $390,000.00 transfer of funds from Webb Lexington Corp. related to the acquisition by Arlene Warner of Full Knit Hosiery Mills. Defendant Arlene Warner became the sole owner of the Full Knit Hosiery Mills.

34. On information and belief, Webb Lexington Corp., Arlene Warner and son Stuart Warner were the primary beneficiaries of the conduct by Leonard Warner that resulted

in defendant Leonard Warner being indicted for felony obtaining property by false pretenses.

35. Suit in state court was initially filed against only defendant Leonard Warner and the Warners' corporation. After discovery revealed the involvement of defendant Arlene Warner and the additional corporations owned by defendant Arlene Warner, plaintiffs filed an Amended Complaint against both defendants, their corporation, and Webb Lexington Corporation, a corporation owned 100% by defendant Arlene Warner, and in which she was Director, Vice President, and Corporate Secretary. The suit in state court and felony criminal proceedings commenced in state court against defendant Leonard Warner was settled on the eve of trial based on restitution/settlement amount of $300,000.00, being $200,000.00 cash and $100,000.00 over time. To induce plaintiffs to finance the $100,000.00 of the $300,000.00 restitution/settlement, defendants provided a Deed of Trust on their home and also on real property owned by Hosiery Industries, Inc., another corporation owned by defendants.

36. In consideration for defendants agreeing to make restitution to plaintiffs in the total amount of $300,000.00, including signing the Promissory Note and Deed of Trust referenced above, plaintiffs consented to the dismissal of an indictment against defendant Leonard L. Warner for obtaining property by false pretenses in violation of criminal statute G.S. § 14-100, plaintiffs agreed that plaintiff would take no action to cause criminal proceedings to be brought against defendant Arlene Warner or any defendant, and plaintiffs agreed not to pursue further plaintiffs' claims for fraud, misrepresentation and the like.

37. The "Settlement Agreement" signed by plaintiffs and defendants on or about the same date they signed the $100,000.00 Promissory Note contains the following language about criminal actions:

> The parties further agree that this Settlement Agreement shall be null and void if the pending criminal action is not dismissed by the State of North Carolina..... Mr. Gordon expressly agrees not to disburse any amount whatsoever from the escrow account or release the Note or Deeds of Trust therefrom to any person unless and until the criminal action has been dismissed with prejudice and the terms and conditions of the settlement have been met.

38. The "General Release" signed by plaintiffs and defendants on or about the same date they signed the $100,000.00 Promissory Note expressly recites that plaintiffs had claims "for emotional distress/personal-injury-type damages they claimed to have suffered for the torts of fraud, intentional misrepresentation, intentional infliction of emotional distress...." The parties then acknowledged that all sums paid and to be paid "constitute payment for claims of damages resulting from personal injuries or sickness or mental and emotional distress in a case involving prosecution of a legal suit or action based upon tort or tort-type rights...."

39. Defendants failed to reveal to Plaintiff that, prior to signing the $100,000.00 Promissory Note and Deed of Trust, defendants caused a Deed of Trust to be executed in favor of defendants' state court counsel to guaranty payment of defendants' attorneys.

40. When defendants later filed bankruptcy, plaintiffs learned defendants had, unbeknownst to them, placed a substantial lien in favor of their (state court) counsel on the real property of Webb Lexington Corporation, and there was very little equity in the real property owned by Hosiery Industries, Inc.

41. On March 10, 1998, Charles M. Ivey, III, Trustee of the estate of Webb Lexington Corporation, filed a suit against Tuggle, Duggins & Meschan, P.A., former state court counsel for defendants. See Adversary Proceeding No. 98-2020 in Case No. B-96-10356C-7G, United States Bankruptcy Court for the Middle District of North Carolina.

42. The pleadings of the Trustee in Adversary Proceeding No. 98-2020 allege that a) defendant Leonard Warner and defendant Arlene Warner's wholly-owned corporation, Webb-Lexington, Inc., signed a $100,000.00 "future advances" Note to the defendants' state court attorneys prior to the date defendants induced plaintiffs to agree to finance $100,000,00 of the $300,000.00 restitution/settlement amount; b) the Future Advances Note was secured by a first lien on real property of Webb Lexington Corporation; c) only $18,377.54 was owed when the $100,000.00 future advance Note was signed; d) $40,000.00 was paid to defendants' state court counsel on the secured future advances Note on or about February 22, 1996, after defendants signed the Note to plaintiff and after defendants filed for protection under the Bankruptcy Act; e) the Deed of Trust was provided by Webb Lexington Corporation for no value or consideration and is void and invalid; f) the Deed of Trust by Webb Lexington Corporation was made with actual intent on the part of the corporation to defraud creditors and was made at a time when Webb Lexington Corporation did not retain sufficient property to pay its remaining creditors, and the execution and delivery of the Deed of Trust to defendants' state court attorney and payments thereon constituted fraudulent conveyances under N.C.G.S. §39-15.

43. The pleadings of defendant Tuggle, Duggins & Meschan, PA in Adversary Proceeding No. 98-2020 allege that, based on information available to defendant Arlene Warner's own state court counsel, the doctrine of alter ego applies, and "Webb Lexington Corporation was a mere instrumentality of Leonard Warner, was under capitalized, and failed to follow corporate formalities." On information and belief, defendant Arlene Warner, not defendant Leonard Warner, was the one hundred percent (100%) owner of Webb Lexington Corporation as well as an officer and director with defendant Leonard Warner and the doctrine of alter ego also applies to defendant Arlene Warner.

44. On information and belief, at or about the same time defendants represented to plaintiffs they could only borrow or otherwise come up with $200,000.00 of the agreed $300,000.00 restitution/settlement amount to be paid, one or both defendants in fact borrowed approximately $50,000.00 on the eve of signing the $100,000.00 Promissory Note to plaintiffs, which $50,000.00 was used to pay monies owed to defendants' state court counsel, and this $50,000.00 loan was not disclosed to plaintiffs and seriously impacted defendants ability to pay the $100,000.00 Note to plaintiffs.

45. Defendants were counseled in the state court litigation by experienced bankruptcy counsel who did not reveal to plaintiffs the $50,000.00 loan to pay defendants' counsel or the lien defendants' counsel put in place for itself; on information and belief, defendants induced plaintiffs to finance the $100,000.00 amount with no intent to honor the obligation at the time the Note was signed by defendants.

46. Plaintiffs would not have agreed to accept a $100,000.00 Promissory Note from defendants had plaintiffs known about the $50,000.00 loan to pay defendants' counsel or the substantial lien defendants's [sic] caused to be placed on the real estate of Webb Lexington Corporation, Inc., a corporation owned 100% by defendant Arlene Warner and a substantial asset of defendant Arlene Warner who was personally obligated on the Note.

47. Plaintiffs would not have agreed to accept a $100,000.00 Promissory Note from defendants had plaintiffs known about the substantial lien defendants caused to be placed on the real estate of Webb Lexington Corporation, Inc., which effectively gave defendants' state court counsel a superior lien position to plaintiffs on the "assets of defendant Arlene Warner."

48. On information and belief, defendants induced plaintiffs to extend credit and accept a $100.000.00 Promissory Note/loan arrangement with no present intention to pay the same, and defendants in fact filed bankruptcy without

ever paying any part of principal or interest on the Note, and promptly after filing bankruptcy defendants used available assets to pay $40,000.00 to the very attorneys who crafted in significant part the financed portion of the restitution/settlement arrangement,

49. Defendants engaged in actual fraud, fraud by omission, false pretenses, false representation, obtaining property (money) by false pretenses, larceny by trick and deceit, and ultimately fraudulently induced plaintiffs to accept a $100,000.00 Promissory Note as part of a settlement/restitution arrangement for criminal and civil fraud claims; and defendants willfully and maliciously caused plaintiffs great financial loss and severe mental and emotional distress and suffering.

50. Plaintiffs agreed to the Promissory Note arrangement believing it to be a restitution arrangement for losses they sustained by virtue of the fraud and criminal conduct of defendants. The documents signed as part of the settlement/restitution arrangement clearly reflect the criminal and civil fraud clauses, and plaintiffs understood the release to be effective if and only if defendants made complete payment and restitution as per the agreed terms.

51. Defendants are not entitled to a discharge as to their debt to the plaintiffs as the United States Bankruptcy Code, Title II, §523(a) provides that a discharge under Chapter 7 does not discharge an individual from any debt:

> (2) for money, property, services, or an extension, renewal or refinancing of credit, to the extent obtained by (a) false pretenses, a false representation, or actual fraud,
>
> (4) for fraud or defalcation while acting in fiduciary capacity, embezzlement, or larceny,
>
> (6) for willful and malicious injury by the debtor to another entity...

52. The actions of defendants, including but not limited to inducing plaintiffs to accept the Promissory Note, constitute false representation or concealment by defendants of a material fact, made with knowledge of its falsity or in culpable ignorance of its truth, made with the intent that it should be acted upon by plaintiffs, and plaintiffs justifiably and reasonably relied and acted upon the misrepresentation, resulting in injury to plaintiffs in that plaintiffs suffered substantial losses in 1992 and additional losses when the $100,000.00 Promissory Note proved uncollectible in large part due to the loans to pay and the undisclosed substantial secured debt in favor of defendants' state court attorneys.

53. On information and belief, defendants caused and permitted Webb Lexington Corporation, defendant Arlene Warner's wholly-owned corporation, to engage in a fraudulent conveyance.

54. On information and belief, defendants Arlene Warner and Leonard Warner conspired with each other to deceive plaintiffs and induce plaintiffs to purchase a business from defendants, defendants conspired to do the acts alleged in this pleading, and defendants conspired to do unlawful acts or to do lawful acts in an unlawful manner. The conduct of defendants as alleged in this Complaint constitute acts in furtherance of the conspiracy.

55. As conspirators, the acts of each conspirator, defendant Leonard Warner and defendant Arlene Warner, becomes the acts of each co-conspirator.

56. Defendants are liable to plaintiffs for conspiracy to commit torts (fraud) and criminal acts and for acts in furtherance of the conspiracy for an amount in excess of $10,000.00 for all expenses, losses, and damages plaintiffs has suffered as a result of defendants' acts in furtherance of the conspiracy, and defendants are liable for punitive damages.

57. On information and belief, defendants Arlene Warner and Leonard Warner operated Webb Lexington Corporation, Warner Manufacturing, Inc., and Full Knit Hosiery Mills, Inc. as an instrumentality or alter ego of themselves as sole shareholders, with defendants Arlene Warner and Leo-

nard Warner exercising such complete domination of the policy and business practices of the corporations that the corporations had no mind, will or existence of their own separate and apart from defendants Arlene Warner and Leonard Warner.

58. On information and belief, defendants inadequately capitalized the controlled corporations, defendants siphoned corporate funds to themselves, defendants did not maintain adequate corporate records, and the controlled corporations were at all relevant times insolvent.

59. On information and belief, the individual defendants controlled the corporations in such a way as to commit a fraud or wrong, the control and breach of duty proximately caused the injury complained of, and the corporate veils should be disregarded to hold accountable the individual defendants who engaged in the acts complained of as to do otherwise would result in injustice and be fundamentally unfair.

WHEREFORE, the plaintiffs pray:

1. That defendants be required to give a full and complete accounting of all transfers of property, borrowings, future advances, and use of funds at or about the time defendants signed the settlement/restitution agreements with plaintiffs;

2. That the debt owed to plaintiffs by defendants be determined to be excepted from discharge under 11 U.S.C. Section 523(a);

3. That plaintiffs have and recover of defendants reasonable attorneys' fees.

4. That plaintiffs have and recover of defendants the costs of this action to be taxed by the Clerk.

5. That in the alternative, if defendant Arlene Warner's obligation to plaintiffs is determined to be discharged in Bankruptcy, that plaintiffs be declared released from any agreement and obligation to take no action to cause criminal

proceedings to be brought against Arlene Warner or her son, Stuart Warner.

6. That plaintiffs have and recover of and from defendants such other and further relief as to the Court may seem just and proper.

This the ____ day of _____ 1999.

_____

Harry G. Gordon,
Attorney for Plaintiffs
State Bar No. 5628

OF COUNSEL:

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UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

IN RE:
LEONARD L. WARNER AND
ARLENE L. WARNER, Debtors.

A. ELLIOTT ARCHER AND
CAROL A. ARCHER, Plaintiffs,

v.

LEONARD L. WARNER AND
ARLENE L. WARNER, Defendants.

Case No. 96-10373C-7
Adversarial Proceeding
Number: 97-2003

AFFIDAVIT OF HARRY G. GORDON

Harry G. Gordon, being first duly sworn, says:

1. I am an individual, a U.S. Citizen, and I make this affidavit of my own personal knowledge.

2. I am counsel for plaintiffs in this proceeding.

3. I have been counsel for the Archers in actions against Arlene Warner and Leonard Warner or their companies that have been going on since 1992.

4. On June 25, 1998, I filed a Motion to amend Complaint to determine Dischargeability of Debt. At that time, discovery had not been completed and there was pending a motion I had filed to compel Arlene Warner to answer interrogatories, identify and produce documents, and properly answer request for admissions.

5. At the initial hearing on the Motion to Compel, the Honorable William Stocks indicated in open court that he would order Arlene Warner to further respond to or supplement discovery responses. Thereafter, Arlene Warner's attorney, Mr. Frank Chut, asked me if he could work with me to resolve our differences informally, and he and I did make good progress toward that end, although our progress was disrupted by the fact that he left private practice.

6. Prior to the Motion to Amend Complaint and Motion to Compel coming on for hearing, attorney Frank Chut left private practice. His wife, attorney Mercedes Chut, took over representation for Arlene Warner. Mrs. Chut advised me that she was not at all familiar with the facts of this complex case, and she requested that I agree to an extension of time in order for her to be prepared to argue and defend the various pending motions. She offered and agreed to appear before the Honorable Williams Stocks and request a continuance if I would consent. Under the circumstances I believed that was the only fair and professional thing to do, and I consented to her request.

7. On October 5, 1998, the date set for the hearing, attorney Mercedes Chut did not arrive at the Bankruptcy Court in time, and the matter came on for hearing before she appeared. As a result, the Honorable William Stocks issued an order denying Plaintiffs' Motion to Compel, Plaintiffs' Motion to Amend Complaint to Determine Dischargeability of Debt, and Defendant Arlene Warner's Motion for Summary Judgment.

8. Thereafter, Mercedes Chut ceased representing Arlene Warner in this matter.

9. This matter received a special setting for trial the week of June 1, 1999. I requested a continuance, which request was denied. On May 25, 1999, I appeared before the Honorable William Stocks to hear a Second Motion to Compel Discovery. At that time he informed me that the Motion to Compel, together with a Motion for Summary Judgment,

would be heard on June 1. I did not understand why the Motion for Summary Judgment was again before the court.

10. On May 26, 1999, attorney Trip Adams, who now represents Arlene Warner, informed me in a telephone call that he had refilled the Motion for Summary Judgment. Neither I nor anyone in my firm had ever received a copy of the "second' Motion for summary Judgment. Attorney Trip Adams faxed it to me that day.

11. My clients have been severely prejudiced by the actions and inactions of Arlene Warner in this matter. On May 27, 1999, I filed Objections to Defendant Arlene Warner's Second Motion for Summary Judgment and I also refilled Plaintiffs' Motion to amend the Complaint to determine Dischargeability of Debt.

This the 28th day of May, 1999.

/s/ Harry G. Gordon
Harry G. Gordon

Sworn and subscribed before me,
this the 28th day of May, 1999.

/s/ Michelle Y. Vincent {NOTARY SEAL}
Notary Public
My Commission Expires: 7/5/2000

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

IN RE:
Leonard L. Warner and
Arlene L. Warner, Debtors.

A. Elliott Archer and
Carol Archer, Plaintiffs,

v.

Leonard L. Warner and
Arlene L. Warner, Defendants.

Case No. 96-10373C-7G
Adversary No. 97-2003

ORDER

This adversary proceeding came before the court on June 1, 1999, for hearing upon the following motions:

1. Motion by Plaintiffs to Compel Discovery and for Sanctions and to Strike Defenses;
2. Objection by Plaintiffs to Late Filed Exhibits and Witnesses Identified by Defendant Arlene L. Warner;
3. Objection by Defendant Arlene L. Warner to Plaintiffs' Pre-Trial Disclosures;
4. Motion by Defendant Arlene L. Warner for Summary Judgment; and
5. Plaintiffs' Motion to Amend the Complaint.

Harry G. Gordon appeared on behalf of the plaintiffs and Rayford K. Adams, III appeared on behalf of defendant Ar-

lene L. Warner. For the reasons stated in open court, it is ORDERED that all of the foregoing motions shall be and the same hereby are overruled and denied; and it is FURTHER ORDERED that this adversary proceeding be scheduled for trial on June 28, 1999, at 9:30 a.m. in the United States Bankruptcy Court, Courtroom #1, Second Floor, 101 South Edgeworth Street, Greensboro, North Carolina.

This 2nd day of June, 1999.

/s/ William L. Stocks [STAMP]
WILLIAM L. STOCKS
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

IN RE:
Leonard L. Warner and
Arlene L. Warner, Debtors.

A. Elliott Archer and
Carol Archer, Plaintiffs,

v.

Leonard L. Warner and
Arlene L. Warner, Defendants.

Case No. 96-10373C-7G
Adversary No. 97-2003

[ENTERED: Aug 24, 1999]

ORDER

This adversary proceeding came before the court on August 24, 1999, for hearing upon pending motions at which time the court also conducted a final pre-trial conference. Pursuant to the final pre-trial conference which was conducted, the court is going to sever the issues involved in this case pursuant to Rule 16(c) of the Federal Rules of Civil Procedures which is incorporated into Rule 7016 of the Federal Rules of Bankruptcy Procedure. The issues which are being severed and which will be tried first are the issues involved in the defense in which the defendant asserts that the plaintiffs may not rely upon the misconduct originally alleged against the defendant as grounds for asserting that defendant's obligation under the promissory note attached to the complaint is nondischargeable under §§ 523(a)(2), 523(a)(4)

or 523 (a)(6), based upon the terms and conditions of the settlement in which the defendant executed and delivered the promissory note to the plaintiffs. In this phase of the trial, the parties will be permitted to offer evidence concerning the terms of the settlement pursuant to which the promissory note was delivered to the plaintiffs. If the defendant prevails on this defense, then the dischargeability issue regarding defendant's obligation under the promissory note will be decided in favor of the defendant since the only misconduct alleged against the defendant in this action is the misconduct described in the complaint filed in the original action which is incorporated into the complaint in this action. If the plaintiffs prevail with respect to this defense; the court will then receive evidence regarding the misconduct which is alleged in the original action which the plaintiffs filed against the defendant, and the dischargeability issue will be decided on the basis of such evidence. Having concluded that the issues should be severed and tried in this manner, IT IS SO ORDERED.

This 24th day of August, 1999.

/s/ William L. Stocks [STAMP]
WILLIAM L. STOCKS
United States Bankruptcy Judge